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HARMONIZED SYSTEM

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

APRIL 27, 1987

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HARMONIZED SYSTEM

MONDAY, APRIL 27, 1987

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE,
COMMITTEE ON FINANCE,
Washington, DC.

The committee met, pursuant to notice, at 2:35 p.m. in room SD-215, Dirksen Senate Office Building, the Honorable Spark M. Matsunaga (chairman) presiding.

Present: Senators Matsunaga and Chafee.

[The press release announcing the hearing follows:]

[Press Release]

INTERNATIONAL TRADE SUBCOMMITTEE CHAIRMAN MATSUNAGA ANNOUNCES HEARING ON THE HARMONIZED SYSTEM

WASHINGTON, D.C.—Senator Spark Matsunaga (D., Hawaii), Chairman of the Senate Finance Committee's Subcommittee on International Trade, announced Monday that the Subcommittee will hold a hearing on the Harmonized System. The hearing will be held on Monday, April 27, 1987 at 2:30 p.m. in Room SD-215 of the Dirksen Senate Office Building.

"The Administration has proposed to implement the Harmonized System," Senator Matsunaga said, "and the House has also included provisions to implement the agreement. But the Senate bill has no provisions on the Harmonized System. We want to determine whether the Senate bill should be amended to provide authority for implementing the System."

Senator **MATSUNAGA**. The Subcommittee on International Trade of the Committee on Finance will come to order.

Today's hearing concerns a technical subject with meaningful consequences for both American exporters and importers—the conversion of the world's various tariff systems to one system—that is the Harmonized System.

After years of painstaking and highly technical negotiations, the U.S. Trade Representative is close to completing the conversion of the tariff schedule of the United States to the new Harmonized System Nomenclature. However, before the United States can proceed with the implementation of the new system, the Congress must first decide whether to authorize the President to carry out the conversion or not. That is the purpose of today's hearing—to determine whether the Senate should include an amendment to authorize the conversion to the Harmonized System, and if so, in what manner that approval should occur.

The Harmonized System conversion has involved long years of negotiations both in developing the uniform nomenclature and then in converting the 12,000 tariff classifications of the tariff schedule of the United States to the 8,000 classifications of the Harmonized System.

Given the number of decisions to be made on the classification of products in the conversion process, it is inevitable that some compromises had to be made in reclassifying products into new tariff categories. It is the concern of members of Congress to ensure that in this conversion process American companies receive the same degree of tariff protection after the conversion as before.

In addition, it is important that in negotiating the conversion to the Harmonized System in other countries, that American exporters retain the same level of market access that they are presently afforded.

The House has included language in H.R. 3 to allow the President to submit the Harmonized System conversion as a trade agreement eligible for fast track approval. This provision varies from the proposal in the Administration's trade bill, which would allow the President to accept the final text of the conversion and implement the Harmonized System in the United States.

After considering the information presented in today's hearing, members of the Finance Committee will decide how to proceed on Harmonized System implementation during the committee's markup of omnibus trade legislation—which, incidentally, commences tomorrow.

With these introductory comments, I would be happy to hear from Senator Chafee, if he has any opening remarks.

Senator **CHAFEE**. Thank you very much, Mr. Chairman. No, I do not. Regrettably, I will not be able to stay for a great deal of this session, but I am looking forward to hearing the first couple of witnesses and then will be following the account of it later on. Thank you, Mr. Chairman.

Senator **MATSUNAGA**. Fine. Then, the first witness is Mr. Christopher Marcich, who is the Director of Tariff Affairs of the Office of the U.S. Trade Representative, and who has been the lead U.S. negotiator in the Harmonized System conversion process.

We would be happy to hear from you, Mr. Marcich. You may proceed.

STATEMENT OF MR. CHRISTOPHER MARCICH, DIRECTOR, TARIFF AFFAIRS, OFFICE OF THE U.S. TRADE REPRESENTATIVE; WASHINGTON, DC

Mr. **MARCICH**. Thank you, Mr. Chairman.

Mr. Chairman, first of all I would like to thank you for this opportunity to testify on the Harmonized System.

While my office has had the lead in coordinating the Administration's work on the Harmonized System, it has been a concerted team effort that has involved virtually all of the federal agencies and a lot of members of the private sector.

So, I am here really on behalf of the team that has devoted many years to this project. To summarize my testimony today, I would like to, I hope, to leave you with two major points.

First, is in response to your question on whether, and if so, how the Senate should treat the Harmonized System in its legislation. And there, Mr. Chairman, we have a straightforward answer. In the Administration's competitiveness bill, we have provided a detailed indication of what we consider to be the necessary elements of legislation to provide for the implementation of the Harmonized System. And that legislation is detailed—it covers all of the major points that we think would be necessary to provide for a smooth introduction and subsequent use of the Harmonized System.

The second point that I would like to leave you with, Mr. Chairman, is that the Harmonized System has been a long, technical project which was commissioned by the Congress over 12 years ago now. We are finally ready to implement, after those long years of work; within the next month, we will have the final version of the tariff to present to Congress, converted to the Harmonized System.

We think that that draft will address all of the concerns expressed to us in writing by the private sector, by importers, and by our trading partners—that we have walked the fine line of meeting our domestic and international obligations in our conversion.

In my remarks today, I would like to cover three aspects of the work on the Harmonized System. I would like to begin with some background; turn to an indication of the present status of the work on the Harmonized System, here domestically, as well as internationally; and then I would like to direct some comments to the question of legislation.

Mr. Chairman, the Harmonized System is basically a modern, rational product nomenclature which has been developed internationally. It is more up to date than other systems currently in use, including our present tariff system.

It offers the promise of a common core language for trade with many benefits. We expect those benefits to be experienced by our exporters, as well as by the trading community at large, and by all of the users of the tariff and the trade data that is associated with the tariff.

Indeed, in the area of trade statistics, we expect that there will be major benefits from the adoption of the Harmonized System. Currently, Mr. Chairman, in terms of the statistics that we now have in the United States, there is an insufficient degree of comparability between import and export statistics internally in this country; and then there is virtually no comparability between our own data series and the data of our trading partners.

This frustrates us in trade negotiations, causes difficulties when we are doing our own analysis, and it is a hindrance to successful market analysis by the private sector. The harmonization of the language of trade will lessen these problems significantly.

This will also contribute to the ability of our companies to automate their handling of trade. It is a major benefit, Mr. Chairman—fewer resources more efficiently utilized.

Finally, we should not overlook the benefits to the Customs Service in the area of administering the tariff that we expect from the Harmonized System. In many sensitive product areas, the Harmonized System provides more predictable standards of classification that are more easily administered by the Customs Service.

In an age of diminishing resources, it is important to have such standards that are, in fact, more easily administered.

Mr. Chairman, 12 years ago now—in fact, over 12 years ago—Congress mandated U.S. participation in the development of an international product nomenclature, the Harmonized System, in section 608 of the Trade Act of 1974. During the ensuing eight years or so, intensive technical work was carried out in Brussels in an organization called the Customs Cooperation Council, where the Harmonized System was developed.

The United States was a full and very active participant in that work. U.S. teams were led by the Customs Service and the International Trade Commission; included representatives of the Commerce Department, Bureau of Census, and other agencies; and, at times, members of the private sector, some of whom are in this room today.

After long and difficult technical work in 1983, the international project was completed with the opening for signature of the Harmonized System convention. At that time, we turned to the task of converting our current tariff schedule into the Harmonized System, which is no small task, as you noted.

This work was led, in the first instance, by the International Trade Commission, which conducted the necessary studies and prepared a draft conversion, after holding hearings and taking private sector comments on board. That draft was presented to the Administration for review and for whatever modifications were deemed appropriate.

In 1984, after the Administration, through the Trade Policy Staff Committee, conducted private sector hearings, the Administration republished the draft in 1984 for a further round of public comments and for initial technical consultations on the nomenclature with our trading partners.

After that review was concluded, in October of last year, the Administration re-released the conversion, giving an indication of additional changes that were made. At the same time, in July of last year, the Administration notified the GATT and our trading partners in the GATT of our intention, subject to Congressional approval, to adopt the Harmonized System.

And we provided our GATT trading partners with the necessary documentation to analyze what the conversion to the Harmonized System would mean to them and to our trade agreement obligations.

We have asked for a final set of public comments in our October 1986 publication, and we are also negotiating with our trading partners under GATT article 28 to make sure that we maintain the general level of tariffs that we have commitments to maintain.

We are in the final stages of both of those reviews right now, Mr. Chairman. Within two weeks, we expect to be able to begin producing the final draft of the conversion, which we would then submit to Congress, along with the Harmonized System implementing legislation, which, as I mentioned, is contained in the Administration's competitiveness bill.

At that time, Congress will have the whole Harmonized System package, which, we think, will be available by the end of May.

Mr. Chairman, I think it would be useful for me to summarize, at least very briefly, the sorts of comments that we have had. I think some of them will be made a little later this afternoon by those on the panel.

I think that it can be said very safely that we have done everything possible to develop a sound conversion—one which avoids any adverse impact on domestic industry, and which meets the needs of all of its prospective government and private sector users.

We have made every effort to include private sector input at every step of work on the Harmonized System. Now, you might wonder why there are still people complaining about particular aspects of the conversion. Well, in fact, the majority of comments that we have had are from importers and trading partners—and there is a strong coincidence between those complaints—and in both cases they address perceived tariff increases that would result from our conversion.

There is a simple answer to that, Mr. Chairman. The explanation is in the fact that for the first couple of years of the Administration's work on the conversion, we focused on the comments provided to us by domestic manufacturers, knowing that once we entered into the Article 28 negotiations we would have the other side of the story presented to us and that we would need to address those problems.

Many of the comments we have had are in the area of apparel. The current provisions for the classification of apparel are complex and sometimes difficult to administer, and certainly difficult to translate into the Harmonized System, which relies on different classification criteria than we now have. I think it is safe to say that the current provisions are more subjective and more amenable to differences of interpretation and disputes over the interpretation.

It was impossible for us to produce a verbatim translation of what we now have into the Harmonized System based tariff—it would have been unduly complex. So that, in the end, some changes in tariff rates are truly unavoidable. However, we will do our best to avoid any significant changes, and I think that we will succeed in the document that we present to you in May.

In some cases, the changes that will appear on paper will never be felt by the trade, which will adjust to the new nomenclature and avail itself of the lower duties which are still there, and which the trade is very adept at doing today, and probably will continue to be in the future, Mr. Chairman.

Now, there have also been some other product specific concerns brought to our attention. I think most of these can be safely categorized as truly technical matters that can and will be worked out. We have been open all along to comments—and still are—and are addressing those as best we can.

We want, at the end of the day, to meet our objective of presenting you with a truly neutral conversion which is administerable. We need to strike good balance between our domestic needs and our international obligations.

Mr. Chairman, the international trading community is now poised to implement the Harmonized System on January 1, 1988. At a minimum, all of our major developed country trading partners will be taking that step on January 1, 1988. We, furthermore, have indications that as many as 50 countries will actually take that step at that time.

For our part, we now have eight months to handle the final preparations for implementation if we are to meet the international deadline. There is an intensive work program underway to ensure that we have a smooth transition. I think it is safe to say that the earlier Congress considers the Harmonized System and makes its decision on the question of implementation, the easier the transition will be for our exporters, for our importers, and for our Customs Service—all need some lead time.

In the meantime, however, the Customs Service and other agencies of the government are proceeding with intensive training programs for their specialists. Customs will later broaden the universe to include brokers and perhaps other users of the tariff. Our Bureau of the Census is re-tooling and planning for the adjustment for its statistical programs. That work has been underway and is well along now.

Seminars are being held to advise on the implications of the Harmonized System for special programs, such as the textiles quota program. The Generalized System of Preferences program is also being converted, with full transparency and in a neutral manner.

The private sector is very much involved in our activities in planning for the implementation. However, until there is a definitive confirmation from Congress of its interest in the Harmonized System, there will be uncertainty—and Congress holds the key to removing that uncertainty.

Now, to turn to the question of legislation, Mr. Chairman. The Administration has shown what would be needed by way of legislation to provide for the implementation of the Harmonized System. This is contained in the Administration's competitiveness bill. In short, our legislation would authorize the President to proclaim the new tariff schedule and to accept the Harmonized System Convention. It would also provide for ongoing maintenance of the new tariff and for private sector involvement in shaping the international nomenclature.

This approach is essentially the same way the existing tariff was implemented a quarter of a century ago. The approach worked well then, and we see no need to change. Therefore, we hope that the Senate will incorporate the full Harmonized System implementing legislation as specified in the Administration's competitiveness bill. That would include the final version of the converted tariff that we will be bringing to the Senate in May—and to the House.

In the House's trade bill—in H.R. 3—another approach has been taken. It would permit use of the fast track provisions of Section 102 of the Trade Act of 1974 for introduction of Harmonized System implementing legislation. This is a viable alternative. Congress would make the key decisions without the potentially interminable line-by-line discussion of product specific aspects of the Harmonized System. We have been going through that for years—it can be very tedious.

While the House approach is viable, timing is now becoming a very major concern. As I have indicated, the technical work is just about completed. Internationally, the plans are to implement on January 1, 1988. All indications are that our trading partners will, in fact, meet that date.

Now, delays by the United States could have repercussions elsewhere and could undermine the prospects for the exercise, at least for the United States and perhaps for at least one other major trading partner of ours, which has made it clear all along that they would implement under the condition that we do—and that is Canada.

Domestically—and this is very important—plans for implementation are very well along indeed. If the approach in the House bill is eventually adopted, the Administration could only begin moving Harmonized System legislation once an omnibus trade bill is passed. There is not much time left. Therefore, I think that further staff consultations will be needed in the weeks ahead before charting the final course for the Harmonized System legislation.

By then, we should have a final draft of the proposed new Harmonized System tariff to present to you, and there should be a better indication of the timing of overall trade legislation. The House approach may work, or some variations on the basic fast-track theme may be needed.

Mr. Chairman, successive Administrations since 1975 have supported Congress' mandate for U.S. participation in the development of the Harmonized System. The Harmonized System has always been a non-partisan basically technical project, borne out of the practical needs of international business today. We are really now asking Congress to decide two questions: one—on the whole, has the decade long work program produced a technically sound result; and two—should the United States, together with its trading partners, adopt a common international nomenclature common language of trade? Those are the two key questions, Mr. Chairman.

Our conclusion with respect to both questions is an unequivocal YES. On the first question—the question of the soundness of the conversion—without denying that one could always find a technical detail that could be changed to better suit a particular individual's preferences, in its entirety the conversion is a solid product. In less than a month, we will supply the final draft to Congress together with summary analysis to support these conclusions.

As for the second question, we would not have begun the project and Congress would not have mandated it if there did not exist a strong sense that the time has indeed arrived to harmonize the language of trade. Today, only the United States and Canada among major trading nations use purely national nomenclatures. This has not really been an advantageous position for us. Our trading partners have learned to cope with our system—they have to, given the size and importance of our market to them.

However, our own thinking has remained insulated from that of the rest of the world. Furthermore, we have not been in a position to influence how others classify merchandise, because we have not been a member of the international club. With the work on the development of the Harmonized System, Mr. Chairman, that situation changed dramatically. The United States played a major role in shaping the Harmonized System.

There are a lot of other advantages to this new nomenclature, some of which I mentioned earlier in my testimony. We are not at the end of a long project. Hard work has been invested by the government and by the private sector. The time is upon us to begin reaping some of the returns on our common long-term investment.

Mr. Chairman, since you mentioned that other countries are also planning to adopt the Harmonized System, and you noted that that is an important step from the point of view of our export interests, I would like to take you up on that point and just provide a few brief remarks on what is going on internationally.

Right now, about 12 countries are actively involved in negotiations in the GATT, preparatory to implementation of the Harmonized System. They involve all of our major developed country trading partners, and some developing countries as well.

I think that with the exception of Canada, all of the other countries currently use a system that is closer to the Harmonized System. And so for them, the technical side of the project is much less difficult.

For us and for Canada, it was a project of much greater difficulty, and therefore, the number of changes are relatively more. And the difficulty of resolving the domestic need to have a neutral conversion in the context of our international trade agreement obligations is that much more difficult for us, and I think also for the Canadians—but good progress is being made. And we are within 10 days or two weeks of completing the negotiations on our own schedule.

As for other countries, I think most of them opened with an essentially neutral conversion. We, and in particular, the analysts in the U.S. Government, and there especially in the Commerce Department and in the Department of Agriculture, took great time and great pain to review those conversions, to air any perceived problems with their advisers, to get input; and then we took those comments to our trading partners and sought the removal of any perceived problems.

By in large, we have been successful. There are some issues not necessarily directly related to the Harmonized System that have come into play, especially in our negotiations with the Community, which is unfortunate. We hope to be able to resolve those.

One, in particular, involves a long-standing problem that we had hoped would be resolved in the context of the conversion to the Harmonized System and we are still hoping and pressing to have it resolved—that involves Kraft Paper, something you will be hearing more about later.

Mr. Chairman, with that brief summary of the situation in Geneva, I would conclude my remarks and make myself available for any questions.

Senator **Matsunaga**. Thank you very much, Mr. Marcich. Of course, the concept is a great one and I have high hopes that perhaps trade will be made much, much easier. But, what safeguards, if any, were employed in your negotiations with other countries to ensure that U.S. firms will not be subject to higher duties as a result of the conversion to the Harmonized System?

Mr. **Marcich**. All right. Yes, Mr. Chairman. The safeguards were several, really. And those involved, basically, a lot of hard work on the part of our own analysts and the private sector in identifying potential problems.

But we used our technical experts for a good length of time reviewing the documentation that the trading partners supplied, and there we had ample and very transparent documentation from most of our partners. That was analyzed at the technical level first to see if the technical work seemed sound and appropriate. Then, when any changes were identified at all, those were all coded and reviewed by our own industry or agriculture experts in our Department of Commerce or within USTR or the Department of Agriculture.

And then we made efforts to contact the private sector to check with them to see if any of the changes that were being proposed would be or could cause a problem. And with that information, we went into the negotiations.

So, those are basically the procedures we followed. The basic obligation of everyone converting to the Harmonized System is to maintain current rates unchanged as much as possible, and to have an overall neutrality. And, I would note that many trading partners sought to air on the side of liberalizing a little bit, rather than having to deal with compensation or difficult negotiations.

Thank you.

Senator MATSUNAGA. It is my understanding from your testimony that there will be a change in the way the apparel products will be classified under the Harmonized System. Under the present system, as I understand it, apparel is classified by the material which constitutes its chief value. And under the new system, I am told the classification will be based on a chief weight criteria.

Now, what is the reason for this change and how will it affect the tariff as applied to apparel as compared to the present system?

Mr. MARCICH. Thank you. Yes. The reason for the change, I think, most fundamentally is that the international trading community has used the weight-based standard for years and has found that to be a more tangible, more predictable, less arbitrary system than value. Value is subjective, differs from country to country, can be manipulated, is certainly the subject of lengthy arguments, court cases, and so forth.

So, from an administration point of view, weight certainly seems more appropriate.

Now, as for the consequences—well it depends. It really varies from product to product, from garment to garment say. But, really, there are two aspects to my answer. One is in terms of perceived implications; there is one answer in terms of actual implications; there is another on the perceived side, at least nominally.

Currently, you could have a sweater that would be considered silk if it had less than 50 percent silk in it, and by that means get a lower tariff. Under the Harmonized System, as our propcsals now stand, that sweater would have to be in chief weight of silk in order to get the lower silk rate. So, at least on face value, one would assume that if past patterns of trade continued, that particular sweater might be subject to a higher duty. But, that depends on a lot of assumptions, Mr. Chairman—and one of them is that the patterns of trade will not change at all.

Especially in the garments area, Mr. Chairman, the trade seems extremely flexible from our experience. They seem able to adjust to even smaller incentives than this in order to take advantage of more beneficial provisions.

So, we do think that there will be a certain amount of adjustments on the part of our trading partners that will compensate for some of the changes. However, we recognize that in some cases there could be more difficult adjustments that might have to occur—and there, we are trying to minimize those.

And I think in the final version of the tariff that is presented to Congress, we will have neutralized the biggest of those problems.

Senator MATSUNAGA. On the matter of legislation, does the Administration have any objection to the House proposal?

Mr. MARCICH. Well, Mr. Chairman, it is not so much an objection to the proposal itself. I think that all along it has been considered a viable option to, and, in fact, a desirable option to move Harmonized System legislation on a fast track basis—to have the key questions addressed by Congress without having to get into a line-by-line review of the conversion. And, certainly, a fast track approach does achieve that goal.

The real problem, from our point of view, is the question of timing, Mr. Chairman. Right now, we would like and think we are ready to implement the Harmonized System on the 1st of January, 1988, and we have doubts that the approach suggested by the House would enable us to meet that objective, so that that is really why we would like for you to consider our full implementing legislation as you prepare your own bill.

Senator MATSUNAGA. Senator Chafee, I believe, had questions for you, but I believe he had to go to another meeting. In the event that he has questions for you, he will submit them in writing to you and if you will be so kind to respond in writing for the record.

Mr. MARCICH. I would be pleased to do that.

Senator MATSUNAGA. Well, thank you very much, Mr. Marcich, for taking time to be with us. We appreciate your testifying before the subcommittee.

Mr. MARCICH. Thank you, Mr. Chairman. I appreciate the opportunity.

Senator MATSUNAGA. Our next witness is Mr. Francis Foote, who is an attorney in private practice with the law firm of Siegel, Mandell & Davidson here in Washington, who is a former official of the U.S. Customs Service. So, Mr. Foote, we will be happy to hear from you. You may proceed.

[The prepared written statement of Mr. Christopher Marcich follow:]

APRIL 27, 1987

TESTIMONY OF
CHRISTOPHER MARCICH
OFFICE OF THE U.S. TRADE REPRESENTATIVE
BEFORE THE INTERNATIONAL TRADE SUBCOMMITTEE
OF THE SENATE FINANCE COMMITTEE
ON THE HARMONIZED SYSTEM

Mr. Chairman, Members of the Committee:

I would like to thank you for this opportunity to testify on the Harmonized System (HS).

My comments today will address three broad aspects of the Harmonized System: First, I would like to go over some of the background to the project beginning with a brief description of the HS and its advantages; Second I would like to brief you on where we stand at this moment in our efforts to complete our work on the HS; Finally, I would like to comment on the legislative work program and timetable. I will conclude with a few comments on the reasons why the Harmonized System makes sense for the United States.

The HS is a modern, rational product nomenclature developed internationally. It is more up to date than other systems, including our own present tariff.

Because it will be used worldwide for classification and statistics, the HS offer economies of scale to anyone doing business internationally. Our exporters will be able to get better advice on how their products will be treated abroad. Trade will be facilitated. Modern automation techniques will be made more economical.

Trade statistics will improve from an accuracy point of view and from the point of view of transparency. Standardization means having to learn fewer different systems. It also means there will finally be comparability in trade data. Today, many business and government activities are hampered by the coexistence at home and internationally of many disparate nomenclatures. For example, our own domestic production statistics bear little relation to our trade data. This complicates analysis by data users. Census has already updated the Census of Manufactures to provide greater correspondence to the HS. Internationally, when the United States and trading partners sit down and examine trade data, it is not unusual to run into huge discrepancies which aggravate negotiations and make it more difficult to establish a sound factual base on which to make decisions. Harmonization will lessen these sorts of problems.

Other users will also benefit. For example, transportation interests will reap advantages from a common international language and coding scheme.

Finally, by relying on more objective classification criteria for products such as apparel, our Customs Service will be able to administer the tariff more easily and more accurately. There will be less subjectivity and less opportunity for fraudulent manipulation of the tariff.

Mr. Chairman, twelve years ago Congress mandated U.S. participation in the development of an international product nomenclature, the Harmonized System, in Section 608 of the Trade Act of 1974. The first eight years since 1975 were devoted to the development of the international nomenclature under the auspices of the Customs Cooperation Council in Brussels. The United States was a very active player in this work. The U.S. Customs Service, The U.S. International Trade Commission, and the Bureau of the Census led U.S. efforts during that period and were frequently joined by experts from other U.S. Government agencies and from the private sector. The end product is known as the Harmonized System Convention, which includes the 5,000 product categories that are to form the core of signatories' tariff and statistical systems.

The next phase of the work on the HS began with the USITC's submission to the Administration of a draft conversion of the Tariff Schedules of the United States into the HS. This draft, including its supporting documentation, was released to the public for comments. The Trade Policy Staff Committee (TPSC) also held public hearings on the conversion in the Fall of 1983. After reviewing all of the comments and making appropriate changes in the conversion, the TPSC released a revised draft of the conversion for further public comment and for technical consultations with our trading partners. Finally, once all of the technical work had been completed, last July the Administration notified the GATT of our intention, subject to Congressional approval, to replace the existing U.S. schedule of tariff concessions with a Harmonized System-based tariff, thereby joining our major trading partners in moving to the HS. Supporting documentation was provided to all GATT member countries. The corresponding draft of the conversion was also released to the public for a final review in October, 1986. Since then, the interagency Harmonized System Task Force chaired by USTR has been busy reviewing public comments and requests from our trading partners in order to avoid tariff rate changes which might have an adverse impact on our industry or which would entitle our trading partners to compensation. We are in the final stages of this review. Within two weeks, we expect to be able to begin producing the final draft of the conversion, which we would then submit to Congress along with the HS implementing legislation which is contained in the Administration's competitiveness bill. Thus, Congress will have the whole Harmonized System package by the last week of May.

Mr. Chairman, I believe it would be useful for me to summarize the comments we have had on the conversion. We have sought to develop a sound conversion which avoids any adverse impact on domestic industry and which meets the needs of all of its prospective government and private sector users. We have made every effort to include private sector input at every step of the work on the HS.

The majority of comments we are receiving at this time are from importers and trading partners and address perceived tariff increases resulting from the conversion. We were not surprised given that much of our early focus was on addressing concerns of domestic producers. Many of these comments are from apparel importers. This was expected since from a technical point of view the conversion of our current apparel provisions into the HS posed the greatest difficulty. The TSUS system for apparel is more subjective (and therefore more amenable to manipulation) than the HS. A verbatim replication of the TSUS under the HS provisions it was not possible in most cases. Some changes in tariff rates will occur, although in many cases importers and their overseas suppliers will be able to adjust their products to avoid any rate changes if they so desire. There may be exceptions where we have to revise the proposals in our conversion to avoid any undue tariff increases. We are looking at these now.

There were also a number of other product-specific comments. Most of these are technical matters that can be worked out. At the end of the day, we will present to Congress a neutral conversion. We believe that it will strike a good balance between our domestic needs and our international obligations.

Mr. Chairman, the international trading community is now poised to implement the HS on January 1, 1988. This includes at a minimum all major developed countries, and there are indications that as many as fifty countries intend to adopt the HS.

We have eight months to handle the final preparations for implementation. An intensive work program is underway to ensure a smooth transition. The earlier Congress considers the HS and makes its decision on HS implementation, the easier the transition will be for our exporters, our importers, and for our Customs Service. In the meantime, Customs is proceeding with an intensive training program for its specialists, to be broadened later to include brokers and perhaps other users. Census is re-tooling and planning for the adjustment in its statistical programs. Seminars are being held to advise on the implications of the HS for special programs such as the textile quota program. The GSP program is being converted, with full transparency and in a neutral manner. The private sector is involved in all of these activities. However, until there is a definitive confirmation from Congress of its interest in the HS, there will be uncertainty. Congress holds the key.

The Administration has shown what would be needed by way of legislation to provide for the implementation of the HS. This is contained in Section 510 b of the Administration's Competitiveness bill. In short, the bill would authorize the President to proclaim the new tariff schedule and to accept the Harmonized System Convention. It would also provide for ongoing maintenance of the new tariff and for private sector involvement in shaping the international nomenclature. This is essentially the same way the existing tariff was implemented. The approach worked well then, and we see no need to change. We hope that the Senate will will, therefore, incorporate the full HS implementing legislation as specified in the Administration's Competitiveness bill.

In HR 3, the House has taken another approach: it would permit use of the "fast track" provisions of Section 102 of the Trade Act of 1974 for introduction of HS implementing legislation. This is a viable alternative. Congress would make the key decisions without the potentially interminable line-by-line discussion of product specific aspects of the HS.

Timing is becoming a major concern. The technical work is now just about finished. Internationally, the plan is to implement on January 1, 1988. All indications are that our trading partners are well positioned to meet this date. Any delays by the United States could have repercussions elsewhere and could undermine the prospects for the exercise. Domestically, plans for implementation are well along. If the approach in the House Bill is eventually adopted the Administration could only begin moving the HS legislation once an omnibus trade bill is passed.

There is not much time left. Therefore, further staff consultations will be needed in the weeks ahead before charting the final course for HS legislation. By then we should have a final draft of the proposed new HS tariff to present to you and there should be a better indication of the timing of overall trade legislation. The House approach may work, or some variations on the basic fast-track theme may be needed.

Successive Administrations since 1975 have supported Congress' mandate for U.S. participation in the development of the HS. The HS has always been a non-partisan basically technical, project borne out of the practical exigencies of international business today. We are now asking Congress to decide two questions: one: on the whole, has the decade long work program produced a technically sound result; and, two: should the United States, together with its trading partners, adopt a common international nomenclature?

Our conclusion with respect to both questions is an unequivocal

YES. On the first, without denying that one could always find a technical detail that could be changed to better suit a particular individual's preferences, in its entirety the conversion is a solid product. In less than a month, we will supply the final draft to Congress together with summary analysis to support our conclusions.

As for the second question, we would not have begun the project and Congress would not have mandated it if there did not exist a strong sense that the time has arrived to harmonize the language of trade. Today, only the United States and Canada among major trading nations use purely national nomenclatures. This has not been an advantageous position for us. Our trading partners have learned to cope with our system--they have to given the size and attractiveness of doing business in our country. However, our own thinking has remained insulated from the rest of the world. Furthermore, we have not been in a position to influence how others classify merchandise because we have not been a member of the "club". With the work on the HS, this has changed completely. The United States played a major role in shaping the new system.

There are other advantages to the HS, all of which were known to Congress when it called for work on the new system. I summarized some of them earlier in my remarks.

We are at the end of a long project. Hard work has been invested by the Government and by the private sector. The time is upon us to begin reaping some of the returns on our common long term investment.

STATEMENT OF MR. FRANCIS W. FOOTE, SIEGEL, MANDELL & DAVIDSON, P.C.; WASHINGTON, DC

Mr. FOOTE. Thank you, Mr. Chairman. It is, indeed, a pleasure to appear before you today.

In addition to being a former lawyer with the U.S. Customs Service, I also had the great pleasure of spending five years as a Senior Technical Officer in the Customs Cooperation Council in Brussels. Therefore, I know a little bit about tariff classification on this side of the ocean and a little bit of how it is practiced in the international arena, particularly in Brussels.

I have also prepared a more detailed written statement for inclusion in the record of this hearing, and I would like to briefly summarize the principal points made in that statement.

Senator MATSUNAGA. Your statement will be included in the record as though presented in full, as will the statement of all other witnesses. And we would appreciate your summarizing your statement. We have the traffic light system, as you know. You know what the green means—it means to go; the yellow means go like hell; and red means stop.

[Laughter.]

Mr. FOOTE. I will try to avoid the cautionary light.

Senator MATSUNAGA. Thank you.

Mr. FOOTE. However, before proceeding to a summarization of my written statement, I would like to emphasize one very important point with regard to the timing for implementation of the Harmonized System.

The Harmonized System, as is becoming increasingly clear, is a radical change in tariff nomenclature for the United States, and it will have a tremendous impact on the private sector.

Customs brokers file 95 percent or so of all entries—or 95 percent of the entries filed in the United States are filed by Customs brokers, at least with regard to the overall valuation of merchandise. Customs brokers will have to re-program their computerized entry systems; they are going have to re-train their employees to use the new tariff. Importers, attorneys and trade consultants will similarly have to familiarize themselves with the new tariff. And in many cases, binding rulings will have to be obtained in advance from the Customs Service in order that these parties may gauge the effect which the new tariff system will have on future importations.

Of course, all of this advance preparation for the advent of the Harmonized System is going to require the expenditure of considerable time and money. The private sector will understandably be reluctant to start the conversion process, until such time as it is certain that the Harmonized System will be implemented by the United States.

In order to properly prepare for the arrival of the Harmonized System, so as to minimize the disruption of current operations and ensure an orderly transition to the new tariff system, a minimum of six months advance notice will be necessary.

Accordingly, with the understanding that the Harmonized System is scheduled for implementation on January 1, 1988, it is essential for the implementing legislation to be in place by July 1,

1987. I would be most grateful for the subcommittee's careful consideration of this very important matter.

With regard to my main comments at this hearing, it is not my intention to advocate adoption of the Harmonized System, *per se.* I had experience working with the Customs Cooperation Council nomenclature in Brussels. I also participated as a member of the Secretariat in the preparation of Harmonized System texts and Explanatory Notes relating thereto.

I can assure you that the Harmonized System is a workable tariff system. It has a certain logic—attorneys and importers and Customs personnel can figure out how to work it. After all, if I did that upon my arrival in Brussels, I think almost anyone can.

Senator MATSUNAGA. Did you say it is a workable or unworkable system?

Mr. FOOTE. It is a workable system.

Senator MATSUNAGA. Workable.

Mr. FOOTE. It has a logic to it—one can classify merchandise in it. As to whether it is a better system than the present tariff schedules of the United States, I cannot really say. I think that this would probably devolve to a line item by line item comparison. One can say that one system is better; one can say another system is better. All I can say is the Harmonized System is a workable system.

I am not going to advocate the adoption of the Harmonized System. Rather, I would like to point out certain areas which should be addressed, either in the implementing legislation or in any relevant committee reports.

You asked Mr. Marcich what he thought of the approach taken by the House in H.R. 3. I think the implications in my remarks will be that I would not particularly like to see the H.R. 3 approach either, for the reason that there is essentially nothing there.

My point of reference is the implementing legislation submitted to Congress by the Administration which, I think, is somewhat defective in that there are certain areas not in it that I believe should be covered. So, rather than being in favor of H.R. 3, I am more in favor of the Administration's approach, but I would also like to see some other things, either in the implementing legislation or in the committee reports, to assist in the implementation of the Harmonized System.

Perhaps the most unique aspect of the Harmonized System involves the opportunity which it affords to the United States to support export interests. This arises out of Article 10 of the Harmonized System Convention, which sets forth a dispute settlement procedure.

Under the dispute settlement procedure, the United States could raise an issue before the Harmonized System Committee, and could have discussion of that issue. I am talking about circumstances where a United States export is given an improper and disadvantageous classification in a foreign country. Never before has there been any international forum where these arguments could be made on behalf of U.S. exporters.

But, it is necessary to have several things happen for this dispute settlement procedure to be effective.

First, the U.S. Customs Service must have the authority to issue export rulings as well as import rulings.

Second, all Customs rulings must be made available much better than they have been in the past.

Third, an appropriate administrative mechanism must be established in the United States, whereby exporters may approach the appropriate government agency under circumstances where they can be assured that their problems will be responded to by the Administration and carried to the international forum for resolution.

I would like to make two other very, very brief points, if I may. Great consideration must be given also to the question of what constitutes legislative history under the Harmonized System.

The most important aspect of legislative history is the Harmonized System Explanatory Notes. These Explanatory Notes should be published in the United States, preferably by the International Trade Commission, and made available so that all parties may use the system most effectively.

In addition, some consideration must be given to limiting what documents prepared in Brussels would be considered; otherwise, the private sector is going to be forced to engage in an almost uncontrollable paper chase in trying to find out what people really meant in adopting the Harmonized System texts.

And also, very great care must be given to limit the applicability of Tariff Schedules of the United States precedent under the Harmonized System—once again, if this is not done, great confusion could result.

One final point I would like to make is that the role of the Customs Service, particularly in the international forum—and I am talking about initiating the dispute settlement procedure and discussing classification issues in the Harmonized System Committee in Brussels—the role of the Customs Service is essential, not from the standpoint of trade policy but from the standpoint of being the mouthpiece in that committee.

I think that once the Administration's position is take on an issue for discussion in Brussels, the Customs Service head of delegation should have the authority to put forward the ideas. This is essential because of the particular sensitivities in the Harmonized System Committee where Customs officers have great trust and affection for each other and don't much like to hear the views of anyone else.

The role of Customs in this regard, on the technical aspects of tariff classification under the Harmonized System, is essential.

Thank you, Mr. Chairman.

Senator MATSUNAGA. From your experience with the Customs Service, do you feel that the present Customs Service can handle it without any additional personnel and without any major bureaucratic problems?

Mr. FOOTE. Well, to be perfectly honest, I would doubt it—and I would doubt it from this standpoint. If one looks at how long, at the present time, it takes to get a tariff classification ruling out of Customs Headquarters—and we are talking about a tariff system which has been in place for in excess of 25 years—it takes two, four, six months. It can easily take six months to get a ruling out, which is not really a criticism of the Customs Service—it is a function of personnel availability. They really don't have enough people to handle the work.

Obviously, once the Harmonized System comes into place, there are going to be no precedents to speak of to rely upon. I cannot even assess—even in my own firm we have not been able to assess as yet—the needs of our clients for tariff classification rulings, but we are doing it and it is going to be immense.

Senator MATSUNAGA. What is the solution?

Mr. FOOTE. The solution? Well, one thing is to have the implementing legislation in place as quickly as possible so that we will know that we have to go in and get those rulings and so we can get those rulings from Customs in roughly a six-month period prior to the effective date of the tariff.

I believe that Customs is waiting until the legislation has passed the Congress before accepting ruling requests so that they could issue binding rulings in advance.

Senator MATSUNAGA. And hopefully have schools, maybe. Night schools and——

Mr. FOOTE. Well, I don't know. It is indeed a problem. I would be delighted to hear that the Classification and Value Division has been authorized to hire 10 or 15 more attorneys in order to handle the increased workload. I don't see any signs of that happening.

Senator MATSUNAGA. What about problems in other countries? If we are anticipating problems, certainly other countries will have the same problems in conversion.

Mr. FOOTE. No, not actually, Mr. Chairman, for the reason that for most other countries the Harmonized System represents an evolutionary change, because the majority of our trading partners have been applying the Customs Cooperation Council nomenclature, which bears far more similarity to the Harmonized System than the Tariff Schedules of the United States do.

Senator MATSUNAGA. Well, thank you very much. I appreciate your taking the time to testify before this subcommittee.

Mr. FOOTE. Thank you.

Senator MATSUNAGA. Thank you.

Our next panel of witnesses consists of six witnesses: Mr. Gordon Freund, who is the Co-chairman, American Association of Exporters and Importers Textile and Apparel Group from New York; Mr. Joseph S. Kaplan, Chairman, American Association of Exporters and Importers Harmonized System Committee of New York; Mr. Vico E. Henriques, President, Computer and Business Equipment Manufacturers Association of Washington, DC; Mr. Kenneth A. Kumm, Chairman, Joint Industry Group from St. Paul, Minnesota; Mr. Ted Rowland, Executive Director, International Footwear Association from New York; and Dr. Irene W. Meister, Vice President-International, American Paper Institute, Inc. of New York.

Your testimony will be heard in the order that I called you to the witness table. We will begin with Mr. Freund. Mr. Freund, we would be happy to hear from you.

[The prepared written statement of Mr. Francis W. Foote follows:]

BEFORE THE TRADE SUBCOMMITTEE
SENATE FINANCE COMMITTEE

APRIL 27, 1987

STATEMENT FOR THE RECORD REGARDING LEGISLATION TO IMPLEMENT THE HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM AS THE BASIS FOR A NEW UNITED STATES TARIFF SCHEDULE

Submitted by Francis W. Foote
Siegel, Mandell & Davidson, P.C.
Washington, D.C.

Introduction

The Harmonized Commodity Description and Coding System (Harmonized System) was developed by the Customs Cooperation Council in Brussels, Belgium, as an international product nomenclature and coding system. The Harmonized System was specifically designed to allow use of a single numerical code for identification of products at all stages of international trade. Thus, the Harmonized System has application for tariff purposes, for collection of import and export statistics and for transportation purposes.

The United States supported creation of the Harmonized System from the very beginning and participated at all stages of its development. United States participation was based on the expectation that the Harmonized System would be adopted as a replacement to the current Tariff Schedules of the United States (TSUS). To this end, the administration has submitted to Congress proposed legislation to allow accession to the Harmonized System Convention and to replace the TSUS with a new United States Tariff Schedule which consists of a conversion of the TSUS to the format and nomenclature of the Harmonized System.

This statement is not directed to the question of whether the Harmonized System should be adopted but rather concerns the question of what should be in any such implementing legislation. Although the implementing legislation proposed by the administration would effect adoption of the Harmonized System, that proposal does not appear sufficient to ensure either that the greatest benefit from the Harmonized System will accrue to the United States or that the new United States Tariff Schedule will be effectively and easily applied and administered as national law. The following discussion sets forth various points which should be addressed either in the implementing legislation or in the relevant committee reports to reflect these concerns.

Export Promotion

The principal impetus for United States adoption of the Harmonized System probably derived from the perception that use of a common international tariff and related nomenclature would provide more direct international trade statistical comparability and would facilitate trade negotiations for the United States with its major trading partners under the General Agreement on Tariffs and Trade. It appears that considerably less attention has been given to the fact that application of the Harmonized System by the United States could also provide the United States with a direct, and hitherto unavailable, mechanism to support the interests of United States exporters.

The underlying assumption behind the Harmonized System is that it will be applied uniformly on a worldwide basis by all Contracting Parties. Unfortunately, things may not always work that way because some countries will be constrained to take a position on tariff classification for national trade policy (protectionist) reasons which do not accord with proper legal interpretation, with the result that an imported product is improperly subjected to a higher rate of duty or other import restriction.

Article 10 of the Harmonized System Convention sets forth a dispute settlement procedure which is specifically designed to resolve such problems. Under the dispute settlement procedure, the disagreeing Contracting Parties first attempt to resolve the dispute between themselves. If this is unsuccessful the aggrieved Contracting Party may write to the Council Secretariat in Brussels to request that the issue be placed before the Harmonized System Committee for discussion and decision. If a Contracting Party chooses not to abide by the decision of the Harmonized System Committee, it may finally request that the matter be referred to the Council for consideration at its annual meeting.

Each Contracting Party applies the Harmonized System as national, sovereign law and thus is not bound by the decision of the Harmonized System Committee or Council. However, experience with the dispute settlement procedure applied under the current Customs Cooperation Council Nomenclature (CCCN, formerly referred to as the Brussels Tariff Nomenclature or BTN) demonstrates that most countries will ultimately abide by the decision rather than hold themselves out as undermining the goal of uniform application of the international nomenclature.

In the event that the Harmonized System is adopted as the basis for a new United States Tariff Schedule, provision must be made for effective use of the dispute settlement procedure to protect the interests of United States exporters. The implementing legislation proposed by the administration does not address this issue. Particular areas of concern which should be addressed either in the implementing legislation itself or in the relevant committee reports include the issuance of tariff classification rulings under the Harmonized System, the availability of such rulings to the public, and the procedures which should be followed to ensure that a private party in the United States will have effective access to the dispute settlement procedure.

The issuance of rulings on classification under the Harmonized System is essential to the dispute settlement procedure because such rulings set forth the official U.S. government view on classification and thus form the basis for institution of the dispute settlement procedure under the Harmonized System Convention. It is clear that the U.S. Customs Service will continue to issue binding rulings regarding import transactions under the new tariff system. However, United States exporters should also be able to obtain advisory rulings (limited to the international 6-digit level) both so that they may know what treatment their products should receive in a foreign country and so that they will be able to determine whether there is a basis for requesting institution of the dispute settlement procedure. To the extent that a jurisdictional issue could arise between the export promotion function of the Department of Commerce and the tariff classification function of the Customs Service, the implementing legislation should specifically provide for issuance of advisory export rulings by the Customs Service, for two reasons. First, the Customs Service has considerably more expertise in tariff classification principles and will develop the greatest institutional expertise under the Harmonized System through handling import transactions. Second, issuance of import and export rulings by a single agency will better ensure needed uniformity.

It is not enough, however, to ensure that both import and export rulings will be issued. It is also essential that those rulings be widely and rapidly made available to the public. The past practice of the Customs Service in making its rulings available to the public has proven to be inadequate because comparatively few rulings are published in the Customs Bulletin and rulings are otherwise voluntarily made available by the Customs Service only on microfiche and only on a highly selective basis. Thus, most Customs Service tariff classification rulings have remained hidden from public view. In order to improve the situation (which will in fact otherwise become worse once the Harmonized System goes into effect because the need for rulings under the new tariff will dramatically increase), the Customs Service should be directed both to publish all binding and advisory rulings in the Customs Bulletin in complete or abstract form and to make all such rulings available for inspection and copying in complete form in all Customs Service public reading rooms or public reading areas within a short period of time after issuance.

The implementing legislation should provide for a specific administrative mechanism to ensure that a United States exporter will be able to benefit from the dispute settlement procedure without undue delay. Use of a standing private sector advisory committee or similar bureaucratic clearing house would prove to be both cumbersome and not suited to the needs of an individual exporter. A United States exporter, armed with a Customs Service ruling and faced with a conflicting classification abroad, should be able to write directly to a designated government agency to outline the problem. In order to ensure that his letter does not fall into an administrative "black hole", provision should be made for a mandatory response by the government agency, for example within 30 days to advise the exporter of the action to be taken and within 30 days thereafter to formally institute the dispute settlement procedure if dispute settlement is appropriate.

Legislative History and Other Interpretative Aids

The BTN, the CCCN, the TSUS and the Harmonized System have a complicated and often interrelated history. The TSUS was developed in significant part from language found in the BTN, with the result that the Explanatory Notes under the BTN have often been used by the U.S. courts as an aid in interpreting the TSUS. The present CCCN incorporates many changes made over the years to the original BTN, and a large body of Customs Cooperation Council documents exists with regard to those changes. The Harmonized System was developed with the CCCN as its base, but the Harmonized System is very different and in some cases incorporates language taken from the TSUS at the suggestion of the United States. A very extensive body of documents was developed by the Customs Cooperation Council in connection with the Harmonized System, consisting principally of Committee working documents and reports.

In view of the complicated relationship between these tariff systems and the extensive volume of documents relating thereto, consideration should be given to the possibility of strictly limiting the scope of what may be considered as legislative history or other interpretative aids to the Harmonized System. If this is not done, interpretation of the Harmonized System texts could become overly complicated, and limited public access to Council documents could present serious problems. Unfortunately, the administration's legislative proposal does not address these concerns.

The Explanatory Notes developed in Brussels in connection with the Harmonized System are not part of the Harmonized System Convention and therefore are not binding on the Contracting Parties as legal texts. Nevertheless, the Explanatory Notes represent a very detailed explanation of the intended meaning and scope of the Harmonized System legal texts. The Explanatory Notes thus must be treated as the basic legislative history of the new United States Tariff Schedule (together with any documents prepared by the International Trade Commission to explain the United States national subheadings set forth beyond the 6-digit level), in the same way that the Tariff Classification Study has been viewed as legislative history under the TSUS. In view of the completeness of the Harmonized System Explanatory Notes, the Explanatory Notes to the present CCCN should be precluded from consideration as legislative history for the Harmonized System.

It is also essential to provide for independent publication of the Harmonized System Explanatory Notes by the International Trade Commission so that they may be most effectively used by United States importers and exporters. There are two reasons why the public should not be required to obtain the Explanatory Notes from the Customs Cooperation Council. First, the cost of the Explanatory Notes as published by the Council, at approximately $300.00 per set, is prohibitive. Second, the Council publication is not entirely suitable for import purposes because it will not reflect the particular requirements of United States law. The International Trade Commission should also publish the related Alphabetical Index currently being prepared in Brussels because it will be a very useful aid to classification under the Harmonized System. Implicit in the Commissions's authority to publish these volumes should be the authority to periodically update them to reflect future amendments to the Harmonized System legal or Explanatory Note texts. However, the authority to amend should be limited to cases where the amendment is consistent with United States law, including judicial decisions rendered under the new United States Tariff Schedule.

Other documents generated by the Customs Cooperation Council should not be allowed to be used as interpretative aids under the Harmonized System. These documents include Committee working documents and reports (whether related to the CCCN or the Harmonized System), the Compendium of Classification Opinions, and classification opinion letters issued by the Secretariat to Customs administrations. Committee working documents prepared by the Secretariat do not always reflect sufficient depth of analysis and have no legal standing within the Council. Committee reports often do not reflect all that was said in Committee, do not always provide a useful explanation of the decision taken by the Committee which is normally by majority vote, and will not always reflect the position which the United States delegation took on the issue under consideration. The Compendium of Classification Opinions represents a distillation of classification decisions taken by the Committee and thus is of even less value than the Committee reports. Opinion letters prepared by the Secretariat should similarly be disregarded because they are notoriously superficial in their analysis and thus are unreliable.

It should be pointed out that future Harmonized System Committee working documents and reports, while not useful as interpretative aids, nevertheless will be useful for other reasons and therefore should be made readily available to the public within the United States. The working documents will be essential to the United States trade community because they disclose what classification issues will be considered at an upcoming Committee meeting. It would be preferable for the implementing legislation or relevant committee reports to require establishment of a specific mechanism whereby the working documents may be expeditiously made available to the private sector so that interested parties may provide relevant comments to the responsible agency for presentation and discussion at the Committee meeting. The Committee reports should similarly be made available, principally so that United States parties might use them to support classification arguments in an export context.

The implementing legislation proposed by the administration is also largely silent on the question of what status should be accorded to administrative and judicial precedent developed under the TSUS. This issue concerns both rules of tariff construction developed by the U.S. courts over the years and the scope and meaning of individual tariff provisions as applied to specific products.

The General Rules for the Interpretation of the Harmonized System, which form part of the Convention, will render obsolete some of the rules of construction applied under the TSUS, and it must be made clear that those General Rules take precedence where there is a conflict with a rule of construction applied under the TSUS. With regard to the application of specific tariff provisions to individual products, use of TSUS administrative and judicial precedent in the context of the new United States Tariff Schedule should be strictly limited to cases in which the tariff language is identical in both wording and scope. In some cases the Harmonized System and TSUS wording may be identical but a Harmonized System legal note restricts the scope of the provision so that a TSUS precedent does not apply; in such a case the TSUS precedent must be disregarded. In other cases a Harmonized System Explanatory Note may indicate that the intended scope of a provision is different from that found in an earlier TSUS precedent involving identical language; in such a case the Explanatory Note should normally prevail because, consistent with the notion of legislative history, the Explanatory Note represents the most recent and directly applicable statement regarding the intended scope of the legal text. In order to avoid unnecessary complication of the interpretative process, it would be useful to include in the relevant Committee reports guidelines setting forth appropriate limitations on the application of TSUS precedent.

Agency Responsibility for Technical Issues

Finally, the administration's legislative proposal makes no mention of which U.S. government agency should be primarily responsible for representing the United States on technical classification questions arising under the Harmonized System. For several reasons the Customs Service should be the lead agency, both as head of the United States delegation to the Harmonized System Committee and as the agency to pursue the dispute settlement procedure. As already stated, the Customs Service will have the greatest technical expertise in interpreting the Harmonized System. Moreover, and perhaps more important, representation by the Customs Service will most effectively ensure the protection of United States trade interests because other countries traditionally send representatives from their Customs administrations to attend the Committee meetings in Brussels. Greater credence in the Committee has traditionally been given by delegates to the views and arguments of fellow Customs officers, particularly where the delegates have known each other for a sufficient time to develop credibility and trust. Accordingly, the implementing legislation or the relevant committee reports should vest the Customs Service with the lead role on technical matters and should require continuity in representation so as to make United States representation on such matters as effective as possible.

STATEMENT OF MR. GORDON FREUND, CO-CHAIRPERSON, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS TEXTILE AND APPAREL GROUP (AAEI-TAG); NEW YORK, NY

Mr. FREUND. Thank you, Mr. Chairman

My name is Gordon Freund. I am Director of International Buying and Export Sales for the J.C. Penney Company. I appear today on behalf of the Textile and Apparel Group of the American Association of Exporters and Importers, which I co-chair. We have submitted a detailed statement for the record.

A conversion of the current tariff schedules to the structure of the Harmonized System is an extraordinarily complex and difficult task. Nowhere is the complexity and difficulty more evident than in the textile and apparel chapters. Also, nowhere is the impact of the Harmonized System, both with respect to duties and quotas, greater than on textile and apparel importers.

The Textile and Apparel Group has been deeply involved in the conversion process and appreciates this opportunity to testify.

President Reagan, in his initial request to the International Trade Commission that they prepare a conversion of the tariff schedules to the Harmonized System, set out three basic guidelines for the conversion.

One, that the conversion avoid to the extent possible significant duty rate changes.

Two, that it simplify the U.S. tariff schedules.

And three, that it alleviate administrative burdens on the Customs Service.

In the textile and apparel chapters, improvements have been made in simplification and in reducing administrative burdens on Customs. However, the draft conversion shows major increases in rates of duty in textiles and apparel, contrary to the idea of rate neutrality.

In eliminating ornamentation, for example, as a classification principal, duty rates were set initially on the basis of arithmetic averaging of merged ornamented and non-ornamented classifications.

This was a major departure from the use of either preponderance of trade or trade weighting averaging generally used elsewhere in the conversion, and resulted in substantial duty rate increases.

Although the 1986 draft conversion reduces some of these rates, the remaining differentials will result in increased duties well in excess of $30 million annually.

The changeover from chief value to chief weight as a basis for classification will result in major duty increases in many products manufactured of mixed fibers, including products of chief value silk, linen, or ramie, which are of chief weight cotton, wool, or man-made fibers, and also wool-synthetic blends.

Another major area of duty rate increases results from a new definition of coated fabric as it applies to coated apparel. Now, these two changes—the chief weight, the chief value changeover, and changed definition of coated fabric—will each result in the imposition of millions of dollars of additional duties annually.

We understand that changes which are still under negotiation may reduce some of these rate increases. However, as presently drafted, the cost of the conversion to importers and retailers and ultimately, Mr. Chairman, to the consumer far outweigh the benefits. For this reason, the Textile and Apparel Group opposes the adoption of the Harmonized System, until it is satisfied that the final conversion addresses our concerns.

We feel we just cannot subsidize this venture. A second potential major impact of the conversion relates to quota. Unfortunately, even though the implementation date of the Harmonized System is just eight months away, it is impossible to fully evaluate quota effects, because a correlation of Harmonized System classifications to textile quota categories is not available, and bilateral negotiations on the quota effects of the conversion are just beginning.

The uncertainties surrounding the Harmonized System, both with respect to duties and quotas, greatly concern the textile and apparel importers and retailers, who are already placing orders for 1988, deliveries. It is already very late in the day, Mr. Chairman.

Compounding these uncertainties is the magnitude of the changes which I have just mentioned. The Textile and Apparel Group fears that implementation of the Harmonized System on January 1, 1988, will result in significant business disruption. We, therefore, urge that if the Harmonized System is adopted, implementation be delayed to allow an orderly transition.

Thank you, Mr. Chairman.

Senator MATSUNAGA. Thank you, Mr. Freund. The next witness we will hear from is Mr. Kaplan.

[The prepared written statement of Mr. Gordon Freund follows:]

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AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS
11 WEST 42ND STREET, NEW YORK, N.Y. 10036 • (212) 944-2230

April 27, 1987

Statement Submitted on Behalf of the Textile and Apparel Group of the American Association of Exporters and Importers Before the International Trade Subcommittee of the Senate Finance Committee

This Statement is submitted on behalf of the Textile and Apparel Group of the American Association of Exporters and Importers (AAEI-TAG), with regard to the Conversion of the Tariff Schedules of the United States (TSUS) into the Nomenclature Structure of the Harmonized System. AAEI-TAG is comprised of 109 members, including importers and retailers of textile and apparel products and related companies, which account for a substantial share of U.S. textile and apparel imports.

AAEI-TAG has commented extensively over the past four years on the development of the Draft Conversion, submitting a brief to the U.S. International Trade Commission (December 12, 1982), giving testimony at the ITC hearings in Washington, D.C. (April 1933), submitting briefs to the Trade Policy Staff Committee (October 20, 1983, November 5, 1984, and February 3, 1987, and giving testimony at TPSC hearings (November 15, 1983).

At this time, international negotiations under Article XXVIII of the GATT on the Harmonized System have not concluded. We understand changes to the Conversion will be made as a result of the Article XXVIII negotiations. As such, the exact provisions of the final Conversion are uncertain. Until the nature of the changes are available, AAEI-TAG is not in a position to determine whether it can support implementation of the Harmonized System.

However, in the past we have raised serious concerns regarding certain aspects of the apparel chapters. While some of these concerns, such as the elimination of the ornamentation concept and the reduction of the minimum down requirement for down articles, have been addressed, a number of significant problems remained in the latest Draft Conversion published by the TPSC in October 1986.

If these problems are not rectified, importers and retailers of textiles and apparel, and ultimately consumers, will incur additional costs totaling in the tens of millions of dollars.

The remaining problems in the apparel chapters concern:

- the high duty rates established for merged ornamented and non-ornamented cotton apparel.
- the increased duty rates on apparel of chief value silk, linen, ramie, and other high-value fibers which are in chief weight cotton, wool or man-made fibers, and products chief value wool, chief weight man-made fibers. The chief value/chief weight problem also exists with respect to blended yarns and blended fabrics.
- the restrictive definition of coated fabrics as applied to various articles of wearing apparel.

We also have remaining concerns relating to the classification of gloves and the treatment afforded various articles of infants' wear.

In addition, the adoption of the Harmonized System for textiles and apparel will undoubtedly have major implications for the existing textile quota system and textile quota availability. The United States will be implementing a revised textile category structure in conjunction with the implementation of the Harmonized System and a number of statistical breakouts are being developed for use in conjunction with that structure. However, a correlation of the textile categories and Harmonized System statistical breakouts is not yet available. In the absence of such a correlation it is impossible to determine the impact of the changeover on textile and apparel importers' operations. This is a major concern to importers and retailers. The lead times between importer and retailer decisions to purchase merchandise are typcially nine months or longer. Companies are already making decisions on purchases and placing orders for delivery in 1988. We believe it is essential that the Government develop these materials and provide importers and retailers an opportunity to review and comment upon them as quickly as possible to eliminate the uncertainty which currently exists.

Ornamentation

In the September 1984 Draft Conversion the concept of ornamentation as a classification principle was eliminated. Elimination of ornamentation was favored by Customs and domestic manufacturers as well as by importers and retailers. While the elimination of the concept gave welcome recognition to the fact that no significant ornamented apparel industry exists, the elimination as implemented by the TPSC resulted in the assignment of high duty rates to the classifications resulting from the merger of ornamented and non-ornamented apparel. These rates were derived by the arithmetic averaging of the duty rates for the non-ornamented and ornamented classifications being merged. The 1986 Draft Conversion reduced some of these rates. However, many remain far higher than would have been the case had the trade weighted average or preponderance of trade methods generally employed elsewhere in the Harmonized System for merged classifications been used to set rates.

The rate structure set forth in the October 1986 Draft Conversion will result in a major increase in duties on apparel. For example, the Draft Conversion's duty rate for men's and boys' woven coats (H.S. 6201.12.20) is 14.5 percent ad valorem which equals the arithmetic average of the final MTN rates for the ornamented (21%) and non-ormanented (8%) articles. However, based upon the 1985 trade volume for these articles, the trade weighted average is 8.6 percent ad valorem. This 5.9 percent difference between the two averages will cause importers of this article to incur $8.6 million in additional duty payments a year. For women's and girls' woven cotton coats (H.S. 6202.12.20) the difference between the assigned duty rate (14.5%) and the 1985 trade weighted average duty rate (8.4) will result in $11.7 million of additional duty payments a year. Similarly, the difference between the assigned rates and the 1985 trade weighted average rates for women's and girls' cotton woven trousers (H.S. 6204.62.80) and men's and boys' woven cotton trousers (H.S. 6203.42.40) will result in added duty payments of $4.8 million and $5.5 million a year, respectively. Indeed, the preponderance of non-ornamented to ornamented trade is so skewed in favor of non-ornamented apparel (i.e., between ratios of 7:1 and 73:1) that an argument can be made that there is a clear preponderance of trade in the non-ornamented classifications thereby requiring the adoption of the duty rates for these classifications.

It is essential that these rate disparities be reduced in the final Conversion. We understand rate reductions are being considered but do not know whether they will be of sufficient scope to significantly impact the huge increase in duties which would otherwise result.

Changeover from Chief Value to Chief Weight as a Basis for Classification

Under the current chief value system of classification for textiles and apparel, articles which are chief value silk, linen, or ramie, and chief weight cotton, wool, or man-made fiber, are subject to the duty rates for articles of chief value silk, linen or ramie. The changeover to the chief weight system will result in the identical articles being subjected to the higher set of duty rates for articles of cotton, wool, or man-made fibers. As a result, the changeover will cost importers of the effected blended articles millions of dollars a year in increased duties. For example, the duty rates on a women's silk/acrylic sweater (chief value silk, chief weight acrylic) would increase from 6 percent ad valorem under the present chief value system to 34.6 percent ad valorem under the chief weight system. This 577 percent tariff increase will result in close to a million dollars per year additional duties. Another example of the increased duty rates resulting from the changeover is provided by women's woven silk/nylon blouses (chief value silk, chief weight nylon). Under the present chief value system a duty rate of 8 percent ad valorem is imposed on this article. In contrast, a duty rate of 28.6 percent ad valorem would be imposed on this article under the chief weight system. This change will result in half a million dollars a year in added duty payments for importers of this product.

Importers cannot avoid the increased duties by modifying the blends. The cost of adding additional silk, linen, ramie, or wool to create blends with a chief weight of these fibers would be prohibitive. Moreover, even if the cost of such a modification were not prohibitive, the addition of high value fibers would significantly alter the article's performance properties.

We have recommended that breakouts be established for the major silk and vegetable fiber blend products affected by the changeover so that products with 35 percent or more by weight of these fabrics can be assigned appropriate silk and vegetable fiber apparel duty.

We have also recommended that wool duty rates be assigned to breakouts establishing wool quotas on wool blend products. The chief value/chief weight changeover will also have an enormous impact on duty rates of wool/man-made fiber blend apparel. For example, in the case of men's suits, the duty rate for synthetic fiber in the Draft Conversion is 30.9¢/kg + 27.5% compared to 52.9¢/kg + 21% for wool; in the case of sweaters, the duty rate of the Draft Conversion is 34.6 percent for man-made fiber compared to 17 percent for wool. As with silk, linen, and ramie blended products, we believe it is essential that the duty neutrality be maintained with regard to these wool blend products.

We understand statistical classifications are already being established for wool blend products on a weight basis to deal with the issue of quota migration resulting from the changeover from chief value to chief weight. As a result, woven fabric apparel 36 percent or more by weight of wool and knit aparel 23 percent or more by weight of wool will be treated as wool products for quota purposes. These percentages were chosen as representing the average minimum weight of wool in chief value-wool woven and knit products. As breakouts already are being established in the final Conversion for wool blend products to achieve quota neutrality, rate neutrality can be achieved for these products by assigning wool duty rates to these breakouts.

However, at this time, we do not know whether any such modifications will be included in the final draft.

Coated Apparel

Another area of concern for AAEI-TAG is coated wearing apparel. Coated wearing apparel is currently provided for at TSUS items 376.54 and 376.56 (wearing apparel designed for rainwear, hunting, fishing, or similar uses coated with plastics or rubber) with duty rates of 6.6% ad valorem and 7.6% ad valorem, respectively.

In United States v. H. Rosenthal Co. the Court of Customs and Patent Appeals held that under the definition of "coated or filled" contained at Headnote 2 of Schedule 3, part 4, subpart 6 of the TSUS, i.e., coatings or fillings "which visibly and significantly affect the surface or surfaces thereof otherwise than by change in colour", the coating test is "not whether the coating is visible but whether the fabric surface is visibly affected." Accordingly, the actual coating need not be visible to the unaided eye under the Rosenthal test. United States v. H. Rosenthal Co., 609 F.2d 999, 1001 (C.C.P.A. 1979).

The Draft Conversion changes the existing definition of "coated fabrics" in favour of one that requires the coating to be visible to the unaided eye. Specifically, Note 2(a) of Chapter 59 provides that fabrics in which the coating "cannot be seen with the naked eye" are not "coated" fabrics. Only apparel manufactured of fabrics meeting this definition of coating is accorded the rates currently in affect for coated fabric apparel. For those articles of wearing apparel which have a coating which visibly and significantly affects the surface but cannot be seen with the unaided eye, the Draft Conversion imposes a duty rate significantly higher than the rate imposed upon them under the Tariff Schedules. For example, men's or boys' cotton raincoats meeting the Rosenthal test are currently subject to a duty rate of 6.6 percent ad valorem (TSUS 376.54). Under the Draft Conversion this article is classified at Heading 6201.12.20 and is subject to a duty rate of 14.5 percent ad valorem. This is a tariff increase of 220 percent. In the case of coated non-down ski jackets of man-made fibers the duty rate would increase from 7.6 percent ad valorem (TSUS 376.56) to 29.5 percent ad valorem (H.S. 6211.20.20), a 388 percent tariff increase. The new definition would also exclude quilted apparel of coated fabrics at 5811.00 which meet the Rosenthal test.

In order to correct the problem AAEI-TAG has recommended that new line items be established for key articles of wearing apparel meeting the Rosenthal test at duty rates of 6.6 percent ad valorem for cotton articles and 7.6 percent ad valorem for others. However, it is unclear whether any such breakouts will be established in the final Conversion.

Gloves

AAEI-TAG believes clarifications are needed with respect to the treatment of gloves under the Draft Conversion to ensure rate neutrality from the current TSUS. Ski gloves are presently classified at TSUS 735.06 at a duty rate of 5.5 percent ad valorem. Under the Draft Conversion, provisions exist for gloves of woven materials, classified as either gloves that are "impregnated, coated or covered with plastics or rubber" (H.S. 6216.00.20) at a duty rate of 14 percent or as "other." Separate sub-classifications exist under the "other" classification for ski gloves at 5.5 percent. Therefore, there may be some question whether coated ski gloves would be classified as gloves impregnated, coated or covered or as ski gloves under the "other" heading. In order to clarify this issue and ensure rate neutrality, AAEI-TAG has recommended that new headings for "ski gloves" be created under 6116 and 6216 at the same level as currently exists for "impregnated" gloves and "other" gloves, rather than as a subheading for the "other" gloves heading.

Infants' Wear and Playsuits

Another area of concern is infants' wear, particularly infantsets. Under the present definition of infantsets, combinations of knit and woven infants' wearing apparel, as well as combinations of infants' overdress and underdress, are considered to be infantsets. However, the Draft Conversion changes the definition in such a way that these articles will no longer be considered infantsets since the garments are not both all woven or all knit and, in the case of overdress and underdress sets, not different. Accordingly, these garments will be entered as if they are being imported individually. This will result in the imposition of duty rates that are higher than the rates that would have been assessed had the garments entered as sets. AAEI-TAG has recommended that the proposed duty rates for garments considered parts of infantsets under the current Tariff Schedules but not the

Draft Conversion be lowered to the rate currently imposed upon parts of infantsets.

We have also recommended other modifications in the infants apparel area to restore rates in effect under the current TSUS. These include provisions of infant playsuits, infant jackets, and infant skirts.

A general concern regarding infant apparel is the definition of "babies garments and clothing accessories" in Note 5(a) of Chapter 61 and Note 4(a) of Chapter 62. This definition provides for an 86 centimeter test for babies' garments that would exclude a number of garments currently in sizes for children up to 24 months since American children of 24 months often exceed 86 cm in length. It is our understanding that the Customs Service intends to release an administrative ruling which will provide that garments for children up to 24 months of age will fall under the appropriate heading for babies' garments and clothing accessories. This clarification to the Notes is needed to avoid the possible imposition of duties not imposed under the Tariff Schedules.

Textile Quota Implications

The adoption of the Harmonized System is almost certain to have significant implications on the current textile quota system as well as on quota availability and usage. The changeover from chief value to chief weight, changes in the definition of products, and new rules of interpretation will result in trade migrations between textile quota categories as well as duty classifications. This will require some combination of changes in textile quota category coverage, additional classification breakouts, and negotiations to amend bilateral textile agreements. However, at this time no correlation of textile quota catgories and statistical classifications is available to enable importers and retailers to determine the textile category of specific merchandise, and negotiations to amend bilateral agreements to reflect category changes and possible trade migrations are at a very early stage. Thus, it is impossible to determine the extent of the potential quota problems in the Harmonized System.

Timing of Implementation

Because of the long lead time required between orders and deliveries of apparel, importers and retailers are now in the process of ordering merchandise for entry in 1988, and, in many instances, already have placed orders. Compounding the uncertainty remaining in the Harmonized System with respect to both duties and quota is the complexity of the textile and apparel chapters and the magnitude of the changes involved in this Conversion. Under the circumstances, implementation of the Harmonized System on January 1, 1988, as currently contemplated, is likely result in a chaotic situation, highly disruptive to importers' and retailers' business operations. AAEI-TAG strongly urges that if the Harmonized System is to be adopted, implementation be delayed and a transition period be established to allow sufficient time for an orderly changeover.

Although AAEI-TAG recognizes the merit of establishing a uniform international system of trade clssification, the additional costs imposed upon textile and apparel importers and retailers, and ultimately upon consumers of textile and apparel products, under the October 1986 Draft Conversion far outweigh any benefits from such a system. We must await the results of the current negotiations to see if the final Conversion is changed sufficiently for us to support its implementation.

STATEMENT OF MR. JOSEPH S. KAPLAN, CHAIRMAN, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS HARMONIZED SYSTEM COMMITTEE; NEW YORK, NY

Mr. KAPLAN. Mr. Chairman, I am Joseph Kaplan of the law firm of Ross & Hardies. I am here today as Chairman of the American Association of Exporters and Importers Harmonized System Committee. At the outset, I would like to thank you for the personal interest that you have taken in the problems of international trade, not only in calling these hearings today, but we remember back until 10 and 11 years ago when Senator Rivercop was the first chairman of this subcommittee and we were concerned with Customs penalties legislation, and you took a very, very active role in the resolution of those most difficult problems. And, we thank you today.

The Harmonized System, Mr. Chairman, is a very, very important issue. It is important to our members—all of them will be affected by the implementation of the Harmonized System, some of them rather dramatically.

Our Association has been involved with the development of the HS for a very long time. Ten years ago this month, we appeared before the House Ways and Means Subcommittee on Trade to ask for Congressional support in developing the system. The Association and its constituent groups, Mr. Freund's group, the Chemicals Group, and our Footwear Group have testified before and met with the agencies involved in developing the Harmonized System. And Mr. Freund is, of course, here today and has spoken on behalf of that group.

We applaude the subcommittee's initiative in sponsoring these hearings. Whether the result will be a new bill or a better informed study of pending bills, it is only this subcommittee which is providing an opportunity for analysis and discussion focused on the Harmonized System. And that is a very great importance.

The Association believes that adoption of an international system for classification of goods similarly is of great importance, and there are very important issues, consequently, that need to be focused upon.

We would like, briefly in our oral testimony, to mention five of those.

First, is the Harmonized System desirable in principle and in concept?

Second, is the result of the conversion exercise in the national interest?

Third, is the language of the proposed legislation adequate to guide the government and the courts in its utilization later on?

Fourth, is the system for maintenance or updating the correct one?

Fifth, is the schedule for implementation realistic?

We believe the Harmonized System is desirable. There are two aspects of it which make it compellingly attractive. First, it is simple and easy to use; and second, it is an international system. As to simplicity, it is modern and well organized. It replaces with logic and order principles of classification which have become cumbersome and confusing since first enacted in 1789—and many of those are with us still this day. It is time to say good-bye to such arcane and antiquated concepts as relative specificity, chief value, and others. And we would like to see that happen.

But, on the other hand, there are difficulties. Is the conversion in the national interest? I refer particularly to the points made by Mr. Freund. I think that we should recall that in directing that the government prepare a draft conversion, the President wisely instructed that the conversion be revenue neutral to the maximum extent.

There are two important reasons which inform this wisdom. First, it is the prerogative of the Congress to change or otherwise authorize changes in duty rates—and Congress has not done that. Second, if rates are increased, our trading partners are entitled to compensation and they are always compensated.

AAEI's Textile and Apparel Group has testified separately from us. They brought to you the specifics of the duty rate and quota maneuvers that USTR has performed and the injury that they stand to suffer. The other side of that coin is that the compensation package offered to our trading partners by USTR is unknown. Who will pay for this heightened textile and apparel protection? Will it be our farmers who will suffer, or our airplane and engine or super computer manufacturers? We don't know and neither does the Congress. In violating the President's mandate of revenue neutrality, USTR has usurped the prerogatives of this body, and this should not be permitted.

For 25 years, the courts and Customs have been searching the ambiguities of the TSUS to discern Congressional intent. Now, the TSUS was drafted by the Tariff Commission, and debate took place before the Tariff Commission, not before this body.

Now we have a new tariff schedule, and it has been drafted abroad in Brussels, and certainly, there has not been discussion before this body. As Mr. Foote said—and we would support his group in this—we think it is very important, therefore, that the explanatory notes be officially recognized by the Congress as a source of legislative intent.

I have, very briefly, two more things to say if I may, Mr. Chairman.

Senator MATSUNAGA. Please proceed.

Mr. KAPLAN. With regard to maintenance of the system, there is in the legislation proposed by the Administration a provision for hearings by the International Trade Commission that if the President so finds, and if the President determines that a recommendation for updating the system is in the national economic interest of the United States, the President should so proclaim.

We believe the emphasis is in the wrong place. We believe that unless there is a finding that a proposed change is not in the national economic interest, that it is in the national interest of the United States that the uniformity and internationality of the system be maintained. And we would urge that in any implementing legislation the Congress so provide.

Finally, as the other witnesses before me have stated, I would like to comment upon the schedule for implementation. We, too, believe that there is an inadequacy in training, that there is an inadequacy in familiarization time. And we believe that implementation of the schedule should therefore be delayed for a period of up to six months from the date of proclamation. We have so written to the USTR.

We are conducting seminars. I would like you to know, Mr. Senator, that hundreds of people come to our seminars and pay our fees because there is a great thirst for knowledge in the business community about the Harmonized System. And we simply cannot give them enough. There are not enough trained people and there is not enough time. And we think that that is a matter of great concern.

We would appreciate your addressing yourselves to it.

Thank you, Mr. Senator.

Senator MATSUNAGA. Thank you very much, Mr. Kaplan. We will be happy to hear now from Mr. Henriques.

[The prepared written statement of Mr. Joseph S. Kaplan follows:]

TESTIMONY

of the

AMERICAN ASSOCIATION of EXPORTERS and IMPORTERS

By

Joseph S. Kaplan, Esq.

Chairman, AAEI's Harmonized System Committee

Before the

U.S. Senate
Committee on Finance
Subcomittee on International Trade

on the

Harmonized System

April 27, 1987

American Association of
Exporters *and*
Importers *11 West 42nd Street, New York, N.Y. 10036 (212) 944-2230*

Good Afternoon, Chairman Matsunaga and members of the Subcommittee. My name is Joseph Kaplan. I am a partner in the law firm of Ross & Hardies. I am here today as Chairman of the Harmonized System Committee of the American Association of Exporters and Importers (AAEI).

AAEI is a national organization of approximately 1100 member firms engaged in exporting and importing. AAEI members include many manufacturing firms, and firms in service industries supporting international trade such as banks, transportation companies, freight forwarders, customs brokers, transportation consultants, and attorneys. All of AAEI's members are involved in every facet of international trade. All will be affected by the implementation of the Harmonized Commodity Description and Coding System (H.S.), some dramatically.

AAEI has long been involved with the development of the H.S. Ten years ago this month we appeared before the House Ways and Means Subcommittee on Trade to ask for congressional support to develop what has become the H.S. The Association and its constituent groups, the Textile and Apparel, Chemicals and Footwear Groups, have testified before and met with the agencies involved in developing the U.S. version of the H.S. AAEI has supported the concept of a uniform commodity coding system (the H.S.) since its inception.

AAEI applauds the subcommittee's initiative in sponsoring these hearings. Whether the result will be a new bill or a better informed study of pending bills, it is only this subcommittee which is providing an opportunity for analysis and discussion focused on the H.S., and that is of great importance.

The Association believes that adoption of an international system for classification of goods is of great importance. The President's negotiating authority, due to expire on January 3, 1988 should be extended to ensure quick, amendment free passage of the H.S. We urge this Committee to provide authority to the President for implementing the System. However, this negotiating authority must not come at the expense of the trade community, and the Congress should know beforehand the cost to the national economy which will result.

There are five issues we will address:

1. Is the H.S. desirable in principle and in concept?
2. Is the result of the conversion exercise in the national interest?
3. Is the language of the proposed legislation adequate to guide the Government and the courts?
4. Is the system for "maintenance," i.e. up-dating, the right one?
5. Is the schedule for implementation realistic?

I. The H.S. is desirable.

There are two aspects of the H.S. which make it compellingly attractive. First, it is simple to use; second, it is an international system. As to simplicity, the H.S. is modern and well organized. It replaces with logic and order principles of classification which have become cumbersome and confusing since first enacted in 1789. It is time to say good-bye to arcane and antiquated concepts such as relative specificity, chief value, and others. On the second aspect, we will at last be assured that in trade negotiations and dispute settlements we and our trade partners are talking about the same merchandise. Trade statistics, the data base which informs these proceeding's will be vastly improved. These results are important in principle, and the H.S. excellently implements them.

II. Is the conversion in the national interest?

We reluctantly point out that, at least as of late last week, the proposed conversion is seriously flawed. In directing that the Government prepare a draft conversion, the President wisely instructed that the conversion be revenue neutral to the maximum extent. There are two important reasons which inform this wisdom. First, it is the perogative of the Congress to change or authorize changes in duty rates, and Congress has done neither. Second, if rates are increased, our trading partners are entitled to compensation and they are always compensated.

AAEI's Textile and Apparel Group is testifying separately from us today. They will bring to you the specifics of the duty rate and quota maneuvers that USTR has performed and the injury they stand to suffer. The other side of that coin is that the compensation package offered to our trading partners by USTR in return is unknown. Who will pay for this heightened textile and apparel protection? Will it be our farmers who will suffer, or our airplane and engine or super computer manufacturers. We don't know and neither does the Congress. In violating the President's mandate, what USTR has also usurped their preogatives of this body. This should not be permitted.

III. Guidelines to Congressional Intent

For twenty-five years the courts and Customs have been searching the ambiguities of the TSUS to discern Congressional intent. The task was not easy, because the TSUS was drafted by and debated before the Tariff Commission, not Congress. The H.S., in turn, was drafted by international teams in Brussels, Belguim. Nevertheless, because the President will be authorized by Congress to proclaim the H.S. and the implementing legislation classifies the H.S. as a statute.

The H.S. is supported by extensive interpretive materials in the form of Explanatory Notes. Neither the proposed implementing legislation nor the Administrative Statement explaining the draft bill refers to the Explanatory Notes. This is unfortunate. The Explanatory Notes represent the concensus position of the draftees of the H.S. after review by the member states of the Customs Cooperation Council. The Notes are, therfore, the agreed explanation of how the H.S is to be read. It would be most useful if the Congress would give its support to the utilization of the Explanatory Notes as the primary guide to interpretation of the H.S. unless clearly contrary to a statute of the United States.

Without a reference to the Explanatory Notes the proposed legislation is defective. No guidance is given to Customs and no intent is expressed to the courts. We must expect uncertainty, delay, and unnecessary litigation. This is in the interest of no one.

IV. Maintenance of the System

The proposed legislation amplified by the Administrative Statement, rests in the President's authority to accept or reject recommendations for the CCC to up-date the H.S. This is as it should be. But the emphasis in the statute is wrong. It requires that the President find that the amendment is in the national economic interest. We believe this emphasis should be reversed. The President should accept the recommendation unless he or she finds it is against the national economic interest. The H.S. should not be a vehicle for tariff and trade adjustment. It should be as neutral in application and universal in meaning as is possible; and the presumption should be in favor of the implementation by the United State of updating and clarification recommended by the international instrumentality charged with maintenance of the system. It should be remembered that such a pattern will in no way inhibit the fight of the United States to maintain a given rate of duty.

V. Is the Schedule for Implementation Realistic?

The proposed implementing legislation provides a very short period from proclamation to implementation. This is regrettable because, although much simpler and easier to use than the TSUS, the H.S. is different and will require a period for familiarization. More importantly, the Customs Service has so drastically cut back personnel levels in the area of commerical operations, including H.S. training, that resources to train Customs personnel, brokers and commercial interests are not adequate. We have been conducting seminars to help alleviate this need. The response we have gotten persuades us that much more needs to be done. Congress should require Customs to provide adequate training programs, and implementation should be delayed until this is done. We have written USTR and proposed a six month delay.

There are several other points we hope the subcommittee will consider after this hearing.

A. Implementation of the HS will result in a large increase in ruling requests as exporters and importers will be faced with an entire new classifcation system. Our members require certainty in their business dealings and in their dealings with the U.S. Customs Service. Currently, there is inadequacy in the public availability of rulings. Last year, a very low proportion of rulings were published in the Customs Bulletin. The great majority of rulings were unpublished and only available on microfiche, which is not easily accessible by the public. AAEI joins with the JIG in urging the Committee to ensure that rulings under the HS be published in a timely fashion and be made easily available to importers and exporters.

B. As evident from our name, we are an association of exporters and importers. Our exporter members have just as much at stake in the adoption of the HS as our importer members and are justifiably concerned that Schedule B for U.S. exports will not conform to the HS at the 10 digit level. AAEI believes that Schedule B must be a truly international and uniform system. The proposed legislation could mean that identity is only required up to the international level of 6 digits. We recognize that in some instances the detail required to document exports will differ for that required for imports. But this is not a justification for ambiguity or difference. AAEI hopes this ambiguity will be resolved.

C. Accessibility of the System. AAEI asks that the Congress require that the following items be addressed before the implementation of the HS: The international trade community including U.S. Customs, must have a cross-referencing correlation between the TSUS and the new H.S. The previous cross-reference, published in 1983, is out-of-date and practically useless. Exporters, importers, brokers and customs personnel must be able to classify merchandise accurately. AAEI understands that a cross-referencing correlation is being prepared. We ask that it be made available to the public and as early as possible.

AAEI thanks you for the opportunity to express our views on this issue of vital importance to the entire trade community. We stand ready to support the Committee in its efforts to ensure a revenue, duty and quota neutral H.S., which will result in enhanced international trade.

STATEMENT OF MR. VICO E. HENRIQUES, PRESIDENT, COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION (CBEMA); WASHINGTON, DC

Mr. **Henriques**. Thank you, Mr. Chairman.

I am here today representing two organizations in response to the invitation that we received. I am representing the Computer and Business Equipment Manufacturers Association (CBEMA), and the American Electronics Association (AEA).

CBEMA represents primarily companies in the computer, business equipment, and telecommunications area. AEA represents manufacturers of semiconductors, components, instruments, and other electronic products, as well as telecommunications and computer manufacturers.

Our industry is highly dependent on trade and strongly recommends that you enact legislation to implement the new Customs classification system, and you ensure U.S. participation in its future development.

You are already familiar with the long history of the system and the joint efforts of the industry and of the International Trade Commission to develop reasonable, realistic categories for currently marketed exports which will also accommodate future products.

I will not review that history, but note merely that our statistics committee has worked with the ITC for several years to develop the best possible categories for our industry's equipment.

There are two reasons why the implementation of this system is crucial to our industry. Let me explain them to you in a little detail.

First, the system will permit more accurate trade statistics. Currently, trade statistics on both imports and exports have to rely on some guesswork, since not all countries use the same categories or the same measures. Accurate statistics are important from a business point of view—they give our companies information on market conditions and opportunities, in addition to a measure of their success.

Accurate statistics, both U.S. and comparative statistics from around the world, are even more crucial from a legislative and regulatory point of view. Accurate information about trade is the cornerstone for government policies that enable the U.S. trade and the U.S. GNP.

As you are aware, legislation and regulation are double-edged swords—they can harm industry and the country if they are built on misconceptions. Implementation of the Harmonized System will substantially reduce that risk in the trade arena.

Second, the Harmonized System will reduce company administrative costs. Currently, while duties on our industry's products are relatively low throughout most of the world, the administrative costs of doing trade are very high. In fact, though we are steadfast about protecting the duty-free or low-duty status of our industry's products during the HS implementation, our members remark that they are not only concerned about the amount of duty, but also about the expense in administering the export and import systems.

One of the primary inflators of these costs is the separate product coding depending on export destination or import country of origin. The problem becomes even more serious as the developed countries move toward the use of computers in the trade process—often referred to as automated entry. Costs would be dramatically reduced if multinational companies could develop one data base for coding products rather than concerning themselves with separate data bases for each country with which they trade, if they could go through the classification effort once instead of hundreds of times, and if they could put all of their international subsidiaries on the same system.

Freight-forwarding, tariff determination, and all the other steps in the process of doing global business become more accurate and more efficient under the Harmonized System.

As an aside, that accuracy is even more important in the light of an egregious and totally unacceptable section of pending House legislation, the so-called "Customs Scofflaw" provision. Under it, any importer who made three serious errors during a seven-year period in the administration of 400 Customs laws would be prohibited from importing at all for three years.

We agree that companies should help government make the Customs process as accurate as possible, and the Harmonized System will certainly help us work toward that goal.

Realistically, we do not expect the benefits of the HS to arrive overnight. There will be transition problems, especially, as you have heard, in the United States and Canada, which now have codes substantially different from the one proposed. But those problems should be minimized because of the substantial investment in training already made by the U.S. Customs Service.

Let me conclude. The Harmonized System will benefit both government and business. It will provide more accurate information. It complements the U.S. standard industry classification codes now in place. It is an export incentive with some one-time-only costs to government that have, for the most part, already been paid.

We applaud the many people in the ITC and Customs who have worked hard to bring this system to the stage where it can be implemented. And we ask now that the Senate make implementation possible through legislation.

Senator MATSUNAGA. Thank you very much, Mr. Henriques. We will now hear from Mr. Kumm.

[The prepared written statement of Mr. Vico E. Henriques follows:]

STATEMENT OF VICO HENRIQUES, PRESIDENT
COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

Introduction

I am here today representing two organizations with a keen interest in the implementation of the Harmonized System: the Computer and Business Equipment Manufacturers Association (CBEMA) and the American Electronics Association (AEA).

CBEMA represents the leading edge of American high technology companies in computers, business equipment and telecommunications. Our members had combined sales of more than $185 billion in 1986, representing 4.3% of our nation's gross national product. And our 1986 trade surplus in computers and business equipment was $2.184 billion, based on exports of $17.120 billion and imports of $14.936 billion.

AEA is a broadly-based association of 3200 high-tech companies. AEA represents manufacturers of telecommunications equipment, semiconductors, computers, components, instruments, software and other electronics products.

This multinational industry, highly dependent on trade, strongly recommends that you enact legislation to implement the new Customs Classification System and that you ensure U.S. participation in its future development.

I am sure that you are already familiar with the long history of the System and the joint efforts of industry and the International Trade Commission (ITC) to develop realistic, reasonable categories for currently-marketed exports that will also accommodate future products. I will not review that history, but will note merely that CBEMA's Statistics Committee has worked with the ITC for several years to develop the most useful categories for our industry's equipment.

There are two reasons why implementation of the System is crucial to our industry. First, the System will allow us to develop trade statistics that are far more accurate than today's. Second, it will save on business expense. Let me explain those two issues with some additional detail.

The Harmonized System Will Permit More Accurate Trade Statistics

Currently trade statistics--on both imports and exports--have to rely on some guesswork, since not all countries use the same categories or the same measures. Accurate statistics are important from a business point of view; they give our companies information on market conditions and opportunities, in addition to a measure of their success.

Accurate statistics--both U.S. statistics and comparative statistics from around the world--are even more crucial from a legislative and regulatory viewpoint. Accurate information about trade is the cornerstone for Government policies that enhance U.S. trade and the U.S. GNP. As you are well aware, legislation and regulation are double-edged swords; they can harm industry and the country if they are built on misconceptions. Implementation of the Harmonized System will substantially reduce this risk in the trade arena.

The Harmonized System Will Reduce Company Administrative Costs

Currently, while duties on our industry's products are relatively low throughout most of the world, the administrative costs of doing trade
are very high. In fact, though we certainly have our eye on protecting the duty-free or low-duty status of our industry's products during System implementation, our member companies have commented that they are not only concerned about the amount of duty that they pay but also about the expense of administering the export and import system.

One of the primary inflators of these costs is the separate product coding depending on export destination or import country-of-origin. The problem becomes even more serious as the developed countries move toward the use of computers in the trade process--often referred to as "automated periodic entry." Costs would be dramatically reduced if multinational companies could develop one data base for coding products rather than concerning themselves with separate data bases for each country with which they trade, if they could go through the classification effort once instead of hundreds of times, if they could put all of their international subsidiaries on the same system. Freight-forwarding, tariff determination and all the other steps in the process of doing global business become more accurate and more efficient under the Harmonized System.

As an aside, that accuracy is even more important in light of a totally unacceptable section of pending House legislation, the so-called "customs scofflaw" provision. Under it, an importer who has made or been accused of three serious errors during a seven-year period in the administration of 400 customs laws would be prohibited from importing at all for three years. We agree that companies should help Government make the customs process as accurate as possible, and the Harmonized System will certainly help us work toward that goal.

Realistically, we do not expect the benefits of the Harmonized System to arrive overnight. There will be transition problems, especially in the U.S. and Canada, which now have codes substantially different from the one proposed. But those problems should be minimized because of the substantial investment in training already made by U.S. Customs Service.

Conclusion

The Harmonized System will benefit both Government and business. It will provide needed, more accurate information. It complements the standard industry classification codes now in place. It is an "export incentive" with some one-time-only costs to Government that have for the most part already been paid.

We applaud the many people in ITC, USTR, and especially Customs who have worked hard to bring the System to the stage where it can be implemented. We now ask the Senate to make implementation possible through legislation.

MEMBERS OF THE COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

3M
AMP Incorporated
Amdahl Corporation
Apple Computer, Inc.
AT&T
Bell & Howell, Phillipsburg Division
Compaq Computer Corporation
Control Data Corporation
Cummins-Allison Corporation
Dictaphone Corporation
Digital Equipment Corporation
Eastman Kodak Company
Harris/Lanier
Hewlett-Packard Company
Honeywell Information Systems, Inc.
IBM Corporation
ICL, Inc.
Information Handling Services
Micro Switch, a Honeywell Division
Multigraphics, a Division of AM International, Inc.
NCR Corporation
Panasonic Industrial Company
Philips Business Systems, Inc.
Prime Computer, Inc.
Sony Corporation of America
Tandem Computers Incorporated
Tektronix, Inc.
Texas Instruments Incorporated
UARCO Incorporated
Xerox Corporation

30: 4/87

STATEMENT OF MR. KENNETH A. KUMM, CHAIRMAN, JOINT INDUSTRY GROUP; ST. PAUL, MN

Mr. KUMM. Good afternoon, Mr. Chairman. I am Kenneth Kumm, Chairman of the Joint Industry Group and also Manager of Customs and Trade Affairs for a major international company that has a presence in about 50 countries.

The Joint Group is a coalition of American manufacturers, associations, carriers, retailers, exporters, and importers that is broadly representative of all elements of the American business community involved in international trade facilitation with a central interest in Customs matters.

We support the adoption of the Harmonized Commodity Description System as a basis for the Tariff Schedules of the United States [TSUS]. The Harmonized System is needed to assist U.S. exports, and the proposed legislation is not just an import or Customs bill—it is a trade legislation that will help U.S. businesses and industries improve export performance.

It will facilitate automation and should ultimately reduce the risk of errors in duty collection and increase the accuracy and timeliness of statistical reporting. The Harmonized System will assist governments in trade negotiations by providing more accurate information on trade flows, greater comparability of statistics, and a more uniform basis for classification. For the Harmonized System to be most helpful in the United States, the legislation implementing this system should be clear and comprehensive.

The Group has reviewed the proposed implementing legislation submitted by the Administration and supports the early adoption by Congress of the legislation, with certain modifications.

These modifications respond to the concerns on the part of U.S. industry that there appears to be little connection between legal practice in the administration of the current TSUS and the proposed administration of the Harmonized System.

Briefly, we feel that the uniformity in tariff rates should be maintained in the conversion to the Harmonized System. We feel that the explanatory notes developed in connection with the Harmonized System constitute a very detailed explanation of the meaning and the scope of the sections, chapters, headings, and subheadings of the Harmonized System and, therefore, must be treated as a cornerstone of the legislative history of the Harmonized System and must be made widely available within the United States as an interpretative aid to the new TSUS for those in trade who will be operating under its provisions.

The advent of the Harmonized System will result in a dramatic increase in the issuance of tariff classification rulings because the importing community will have to know the Customs position on classifications under the new system. Similarly, U.S. exporters will have to know the U.S. Government position on classification so that they will know whether to initiate the dispute settlement procedure under Article 10 of the Convention to protect their export interest. Therefore, we are recommending additions to the bill to require publication of rulings in a timely fashion, as in the Customs Bulletin.

The Group further recommends that the TSUS and the Schedule B export statistics publication be in conformance to the 10-digit level wherever possible to do so. If the two schedules are allowed to develop independently beyond the 6 digits, importers and exporters could end up with different codes, thus defeating the intent of the Harmonized System.

On the practical side, changes in legal administrative practice is of major interest to the private sector. Consequently, the new system should begin a new cycle of legal precedents wherever possible, since the maintenance of extensive correlation tables to the previous TSUS will be difficult to administer, expensive, and subject to error. We should take this opportunity to start anew.

U.S. representatives to the Customs Cooperation Council can be crucial to the effectiveness of administration of the new code. We recommend that the Treasury Department be the designated representative to the Harmonized System Committee, but it is essential that the USTR and the other interested agencies participate fully in the process. U.S. exporter interests must be taken into consideration during the development of the U.S. positions brought before the Harmonized System Committee.

USTR should be a coordination agency, as provided for in the legislation, but there should be a mechanism within the Administration for dealing with private sector requests for access to the disputes settlement procedures of the Convention.

One suggestion of the Group would be to require in the legislation the formalization of an interagency committee parallel to the 484(e) Committee, with full participation by the Department of Commerce, the United States International Trade Commission, and other interested agencies.

Lastly, the Group recommends a longer period of six months after publication of the proclamation as an effective date of the new system. More detailed proposals are attached to this testimony, and I request that they be included here as part of my submission.

We greatly appreciate this opportunity to comment on the Harmonized Commodity Description System, and will be pleased to supply additional explanations of our concerns and comments, if desired.

Thank you.

Senator MATSUNAGA. We shall now hear from Mr. Rowland.

[The prepared written statement of Mr. Kenneth A. Kumm follows:]

TESTIMONY OF KENNETH KUMM, CHAIRMAN OF THE JOINT INDUSTRY GROUP

Good afternoon Mr. Chairman and members of the subcommittee. I am Kenneth A. Kumm, Chairman of the Joint Industry Group (the Group). The Group is a coalition of American manufacturers, associations*, carriers, retailers, exporters and importers that is broadly representative of all elements of the American business community involved in international trade with a central interest in customs matters.

As we have stated previously during the development of the Harmonized System, we support the adoption of the Harmonized Commodity Description and Coding System (HS) as the basis for the Tariff Schedules of the United States (TSUS). The HS is needed to assist U.S. exports and generally help in the international trade operations of U.S. business and industry. The proposed legislation is not just an import or customs bill, it is trade legislation that will truly help U.S. business and industry improve export performance. It will facilitate automation and should ultimately reduce the risk of errors in duty collection and increase the accuracy and timeliness of statistical reporting. The HS will assist governments in trade negotiations by providing more accurate information on trade flows, greater comparability of statistics and a more uniform basis for discussion. For the HS to be most helpful in the U.S., the legislation implementing this system should be clear and comprehensive.

The Group has reviewed the proposed implementing legislation submitted by the Administration on February 19th and supports the early adoption by the Congress of that legislation with certain additions and modifications. These additions and modifications respond to concerns on the part of U.S. industry that there appears to be little connection between legal practice in the administration of the current TSUS and the proposed administration of the HS.

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* The list of associations is attached at the end of this testimony.

One of the Group's primary concerns is that uniformity in tariff rates be maintained in the conversion to the HS. We are watching with interest the Article XXVIII negotiations in Geneva to see that all countries keep the changes in rates of duty at a minimum. The change in classification system should be as neutral as possible in respect to changes in rates of duty.

Another significant concern of the Group is the status of the Explanatory Notes developed in connection with the HS that do not form part of the Convention itself and thus are not binding on the Contracting Parties as legal texts. Nevertheless, the Explanatory Notes constitute a very detailed explanation of the meaning and scope of the Sections, Chapters, headings and subheadings of the HS. The Explanatory Notes therefore must be treated as a cornerstone of the legislative history of the HS and must be made widely available within the United States as an interpretative aid to the new TSUS for those in the trade who will be operating under its provisions. A detailed Alphabetical Index is currently being prepared by the Customs Cooperation Council Secretariat to indicate where specific products are mentioned in the HS legal texts or Explanatory Notes. As in the case of the HS legal texts set forth in the Annex to the convention, the Explanatory Note texts are administered as living texts and thus may be amended in the future. It is therefore essential to provide the government with the authority to maintain the texts by periodically amending the Explanatory Notes to conform with those amendments which it would publish in addition to the Alphabetical Index available from the Customs Cooperation Council.

Furthermore, the past and present practice of the Customs Service in making its tariff classification rulings available to the public has proven to be inadequate. A very small proportion of those rulings are published in the Customs Bulletin, and unpublished rulings are made available only on microfiche and only on a selective basis; thus, a large number of rulings which are relied upon by Customs officers in subsequent cases remain hidden from public view. The advent of the HS will result in a dramatic increase in the issuance of tariff classification rulings because the importing community will have to know the customs position on classifications under the new United States Tariff System. Similarly, U.S. exporters will have to know the U.S. Government position on classification so that they will know whether to initiate the dispute settlement procedure under Article 10 of the Convention to protect their export interest. Therefore, we are recommending additions to the bill to require publication of rulings in a timely fashion.

The Group further recommends that the TSUS and the Schedule B export statistics publication be in conformance to the 10-digit level wherever practicable to do so. The language in the proposed legislation could be interpreted to mean only conformance at the 6-digit level. Since the TSUS will be 10-digits to allow further tariff and statistical breakouts, Schedule B should be extended to conform to the TSUS 10-digit code wherever practicable. If the two schedules are allowed to develop independently beyond the 6 digits, importers and exporters could end up with different codes, thus defeating the purpose of the HS.

On the practical side, changes in legal administrative practices such as decisions that have the effect of a "uniform or established practice" under section 177.10 of the Customs Regulations and the requirements of public notice under 19 U.S.C. 1315(d) before changes can be made in those practices, or what will constitute legislative history and other interpretive aids is of major interest to the private sector. Consequently, the new system should begin a new cycle of legal precedents wherever possible since the maintenance of extensive correlation tables to the previous TSUS will be difficult to administer, expensive and subject to error. We should take this opportunity to start anew.

U.S. representation at the Customs Cooperation Council can be crucial to effective administration of the new code. We recommend that the Treasury Department be the designated representative to the HS Committee but it is essential that USTR, the International Trade Commission and the other interested agencies participate fully in the process. U.S. exporter interests must be taken into consideration during the development of U.S. positions brought before the Harmonized System Committee.

USTR should be the "coordination" agency as provided for in the legislation, but there should be a mechanism within the Administration for dealing with private sector requests for classification opinions and requests to obtain access to the disputes settlement procedures of the Convention. One suggestion of the Group would be to require in the legislation the formalization of an interagency committee parallel to the 484e Committee with full participation by the Department of Commerce, the U.S. International Trade Commission and other interested agencies. This Interagency Committee should also be authorized to initiate and prepare technical proposals for the Council either on behalf of the U.S. Government or the private sector.

Lastly, the Group recommends a longer period after publication of the proclamation as the effective date of the new system. The private sector requires a lead time longer than the 15 days provided in the proposed legislation to implement a changeover. A minimum of six months is needed.

The Group is strongly concerned with the implementation of the HS and therefore urges the subcommittee to review our proposed additions and modifications for the reasons previously discussed. More detailed proposals are attached to this testimony and I request that they be included here as if part of my submission.

We greatly appreciate this opportunity to comment on the Harmonized Commodity Description System, and will be pleased to supply additional explanations of our concerns and amendments, if desired.

THE JOINT INDUSTRY GROUP
WASHINGTON, D.C.

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TRADE ASSOCIATIONS SUPPORTING THE STATEMENT OF THE JOINT INDUSTRY GROUP ON IMPLEMENTATION OF THE HARMONIZED SYSTEM

AEROSPACE INDUSTRIES ASSOCIATION
AIR TRANSPORT ASSOCIATION OF AMERICA
AMERICAN ELECTRONICS ASSOCIATION
AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS*
AMERICAN RETAIL FEDERATION
COMPUTER AND BUSINESS MANUFACTURERS ASSOCIATION
COUNCIL OF AMERICAN-FLAG SHIP OPERATORS
ELECTRONIC INDUSTRIES ASSOCIATION
FOREIGN TRADE ASSOCIATION OF SOUTHERN CALIFORNIA
INTERNATIONAL FOOTWEAR ASSOCIATION
INTERNATIONAL HARDWOOD PRODUCTS ASSOCIATION
MINNESOTA WORLD TRADE ASSOCIATION
MOTOR VEHICLE MANUFACTURERS ASSOCIATION
NATIONAL ASSOCIATION OF MANUFACTURERS
NATIONAL ASSOCIATION OF PHOTOGRAPHIC MANUFACTURERS
NATIONAL BONDED WAREHOUSE ASSOCIATION
NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION
NATIONAL RETAIL MERCHANTS ASSOCIATION

*Supports the Harmonized System in principle

APRIL, 1987

JOINT INDUSTRY GROUP COMMENTS ON HARMONIZED SYSTEM IMPLEMENTING LEGISLATION

PARAGRAPH (7) - The JIG proposes the following language as an additional sub-section (C).

> (C) The Commission shall compile and publish, in the form of printed copy, and make available to the public for use in the interpretation of the new United States Tariff Schedule, the texts of the Explanatory Notes to the Harmonized Commodity Description and Coding System in existence on the date provided by paragraph (26). The Commission shall similarly compile, publish and make available the Alphabetical Index pertaining to the Harmonized System nomenclature and Explanatory Notes as published by the Customs Cooperation Council. The Commission shall keep the Explanatory Notes and Alphabetical Index under continuous review and periodically amend them --
>
> (i) to reflect all modifications to the new United States Tariff Schedule proclaimed pursuant to paragraph (12);
>
> (ii) to reflect all other modifications to the Harmonized System Explanatory Notes made pursuant to Article 7 or 8 of the Convention;

(iii) to reflect tariff classification decisions rendered by the United States courts that nullify a particular explanatory note;

(iv) to reflect technical and conforming changes to the new United States Tariff Schedule of the type described in paragraph (14); and

(v) as other circumstances warrant, in conformity with United States obligations under the Convention.

EXPLANATION OF PROPOSED AMENDMENT

The Explanatory Notes developed in connection with the HS do not form part of the Convention itself and thus are not binding on the Contracting Parties as legal texts. Nevertheless, the Explanatory Notes constitute a very detailed explanation of the meaning and scope of the Sections, Chapters, headings and subheadings of the HS. The Explanatory Notes therefore must be treated as a cornerstone of the legislative history of the HS and must be made widely available within the United States as an interpretative aid to the new United States Tariff Schedule. A detailed Alphabetical Index is currently being prepared by the Customs Cooperation Council Secretariat to indicate how specific products are mentioned in the HS legal texts or Explanatory Notes. The Alphabetical Index will be a useful aid to tariff classification and thus should also be made available within the United States to the importing and community. The Explanatory Notes and Alphabetical Index will also benefit United States exporters who will thereby be better able to determine the probable tariff classification of their products abroad under the 6-digit HS.

The prohibitive cost of the Explanatory Notes and Alphabetical Index if purchased from the Customs Cooperation Council, coupled with the fact that the Council publications may not be adequate for United States import purposes because they may not reflect the particular requirements of United States law, suggest that the International Trade Commission (the Commission) undertake to separately publish them (taking into account appropriate copyright laws) and make them available to the public.

As in the case of the HS legal texts set forth in the Annex to the Convention, the Explanatory Note texts are administered as living texts and thus may be amended in the future. It is therefore essential to provide the Commission with the authority to periodically amend the Explanatory Note texts which it publishes. For the same reason the Commission should also have the authority to amend the Alphabetical Index to reflect changes in both the United States Tariff Schedule and the United States Explanatory Notes. The proposed language sets forth five circumstances in which the Commission may take such action.

Subparagraph (i) is directed primarily to cases in which conforming HS Explanatory Note amendments are included in a recommendation by the Customs Cooperation Council to amend the Annex to the Convention and that recommendation is adopted by the United States, as provided for in paragraphs (11)(A)(i) and (12)(A) of the legislation. Such amendments would involve both the explanatory texts themselves and the legal texts which are also set forth within the Explanatory Notes. This subparagraph would also permit amendments under "other circumstances" as provided in paragraph (11)(A)(ii), e.g. to cover amendments to the legal texts (and consequential amendements to the Explanatory Notes) made by the Harmonized System Committee by corrigendum rather than pursuant to a Council recommendation.

Subparagraph (ii) concerns Explanatory Note amendments which (1) are adopted by the Harmonized System Committee or by the Customs Cooperation Council by corrigendum rather than by means of a formal Council recommendation and (2) do not result from a proclamation issued under paragraph (12). Under Articles 7 and 8 of the Convention, Explanatory Note corrigendum amendments adopted by the Harmonized System Committee go into effect automatically if no Contracting Party both lodges an exception to the amendment and requests referral of the question to the Council. Following referral to the Council when a Contracting Party has lodged an exception to the amendment, the amendment will become part of the Council Harmonized System Explanatory Notes if the Council approves the decision taken by the Harmonized System Committee but any Contracting Party which continues to disapprove of the amendment may refuse to give effect to it. The subparagraph requires that all such amendments adopted by the Committee and by the Council be included in the United States Explanatory Notes so that the United States Explanatory Notes will continue to be relevant for both import and export purposes. In order to be consistent with the notion of what constitutes legislative history under United States law, annotations should be included for each corrigendum amendment so that amendments made after the initial effective date of the HS may be identified. In order that United States exporters may be aware of the non-acceptance of any such amendment by a foreign country, and so that United States importers may be advised of any such non-acceptance by the United States, the Commission should also include appropriate footnotes or annotations to clarify the situation.

Subparagraph (iii) has reference to the fact that each Contracting Party applies the Annex to the Convention as national law which takes precedence over decisions taken by the Harmonized System Committee and the Council. Thus, where a United States court refuses to apply an existing Harmonized System Explanatory Note text based on the view that it is inconsistent with the clear meaning of the legal text, or where a subsequent Harmonized System Explanatory Note amendment conflicts with a United States court decision, the court decision must take precedence for import purposes. Amendments under subparagraph (iii) could be made where there is no conflict if the Commission decides that clarification is appropriate. An amendment would be made principally where a conflict exists, and the amendment would take the form of a footnote or annotation so that (1) importers would know that the Explanatory Note text has no application for import purposes and (2) exporters would be able to apply the Explanatory Note text for export purposes.

Subparagraph (iv) is simply intended to conform to the authority conferred on the Commission under paragraph (14).

Subparagraph (v) is intended as a catch-all provision. Among the "other circumstances" that might warrant amendments to the Explanatory Notes would be (1) a need for clarification of an additional United States Note contained in the United States Tariff Schedule, (2) the need for an explanation of the scope of a national (i.e., beyond the

6-digit level) subheading in the United States Tariff Schedule and (3) the need for an explanation of provisions contained in Chapters 98 and 99 which are included in the United States Tariff Schedule but which do not form part of the HS. The limitation with regard to United States obligations under the Convention is intended to ensure that United States Explanatory Note amendments will be in accordance with the principle of uniform application of the HS, subject only to the requirements of national law.

PARAGRAPH (10) - The Group proposes that the following language be added as sub-section (C).

> (C) The United States Customs Service shall publish in the Customs Bulletin in complete or abstract form all written binding or advisory rulings with regard to the classification of goods in the new United States Tariff Schedule or in the Harmonized System issued on or after the date provided by paragraph (26). All such rulings shall also be made available to the public for inspection and copying in complete form in Customs Service public reading rooms or public reading areas within fourteen days of issuance.

EXPLANATION OF PROPOSED AMENDMENT

The past and present practice of the Customs Service in making its tariff classification rulings available to the public has proven to be inadequate. A very small proportion of those rulings are published in the Customs Bulletin, and unpublished rulings are made available only on microfiche and only on a selective basis; thus, a large number of ruligs which are relied upon by Customs officers in subsequent cases remain hidden from public view. The advent of the HS will result in a dramatic increase in the issuance of tariff classification rulings because the importing community will have to know the Customs position on classifications under the new United States Tariff System. Similarly, U.S. exporters will have to know the U.S. Government position on classification so that they will know whether to initiate the dispute settlement procedure under Article 10 of the Convention to protect their export interests. The proposed amendment is designed to solve these availability problems. Publication in the Customs Bulletin will ensure the widest disemination of the rulings, and availability in public reading rooms within fourteen days of issuance will overcome the problems in delays in Customs Bulletin publication.

PARAGRAPH (17) - The Group recommends that the TSUS and the Schedule B export statistics publication be substantially in conformance to the 10 digit level wherever it is practicable to do so. The language in the proposed legislation could be interpreted to mean only conformance at the 6 digit level.

PARAGRAPH (18) - The Group is concerned that changes in legal administrative practices such as Customs decisions that have the effect of a "uniform or established practice" under section 177.10 of the Customs Regulations and require public notice under 19 U.S.C 1315(d) be before changes can be made or what will consitute legislative history and other interpretive aids, have not been open for public comment. The Committee Report should direct the Administration to publish its intentions prior to the implementation date in paragraph (26). The Group recommends that with the new system, a new cycle of legal precedents be also developed wherever possible. The maintenance of extensive correlation tables that allows reference to the previous TSUS will be difficult to administer, expensive and subject to error.

PARAGRAPH (21) and (22) - The Group is concerned that these two paragraphs do not clearly provide access to the international disputes settlement process for private sector companies. It is recommended that a new paragraph "U.S. REPRESENTATION AT THE CUSTOMS COOPERATION COUNCIL" be inserted between paragraphs (21) and (22), and that the USTR be directed to establish as part of the "coordination" process a mechanism within the Administration for dealing with private sector requests to obtain new classification decisions from the Harmonized System Committee, rulings that might be available from other countries, or to obtain access to the disputes settlement procedures of the Convention. The Committee's suggestion is to require in the legislation the formalization of the Customs Cooperation Council Interagency Committee as created by Section 608 of the 1974

Trade Act with the International Trade Commission as a voting member. Part of the charter of that committee would be to process private sector requests for international dispute settlement cases.
The new paragraph for Council representation should read:

PARAGRAPH (X) - U.S. REPRESENTATION AT THE CUSTOMS COOPERATION COUNCIL -- The United States shall be represented at meetings of the Harmonized System Committee of the Customs Cooperation Council with respect to the Convention by the United States Department of the Treasury, the United States Department of Commerce, and the Commission. The United States Department of Agriculture and other Governemnt agencies shall provide technical assistance as required.

The Interagency Committee recommended above should also be authorized to prepare technical proposals for the Council either on behalf of the U.S. Government or the private sector. Such a provision for the legislation and could read:

PARAGRAPH(X) - DEVELOPMENT OF TECHNICAL PROPOSALS. - In order to properly maintain the Convention and to maintain U.S. programs for the development of adequate and comparable statistical information on merchandise trade, the Secretary of the Treasury, the Secretary of Commerce and the Commission are authorized and directed to prepare technical proposals to assure that the U.S. contribution to the further development of the Convention recognizes the interests of the U.S. business community in a system that reflects sound principles of commodity identification and modern producing methods, trading patterns, and practices.

These and other Government Agencies shall also participate as needed in matters arising under the Convention and shall endeavor to secure the continuing development of the Convention in a manner not inconsistent with U.S. Customs Service classification practices and judicial precedents.

PARAGRAPH (26) - The Group would recommend a period longer than fifteen days after publication of the proclamation provided for in paragraph (8) as the effective date of the new system. The private sector will need more lead time to implement a changeover. A minimum of six months is needed.

STATEMENT OF MR. TED ROWLAND, EXECUTIVE DIRECTOR, INTERNATIONAL FOOTWEAR ASSOCIATION (IFA); NEW YORK, N.Y.

Mr. Rowland. Thank you, Mr. Chairman.

I am Ted Rowland, Executive Director of the International Footwear Association (IFA), which represents U.S. companies importing completed footwear into the United States. We appreciate this opportunity to appear before the subcommittee to express our views. We advocate adoption of the Harmonized System.

The Harmonized System is more than a system of nomenclature and classification. Others have discussed the technical aspects of the HS, so our brief testimony is concerned with the "more than" facets of the system. On the technical side, as members of the Joint Industry Group, we have been part of the Group's work in the Harmonized System and associate ourselves with its comments today, particularly on the publication and accessibility of Customs rulings.

As importers of footwear, IFA's members have problems with certain concepts and language and some significantly increased duty rates in the Harmonized System. But we have been part of the process of negotiation and compromise, including the increased duty rates, which has produced the present HS.

We will continue to work to ameliorate the problems, but we are here today to support adoption of the System. The Harmonized System makes good sense in its technical aspects. Adoption will set the United States, we hope, on a path leading to a more rational approach to classification for fields other than international trade, like transportation and domestic production.

Its benefits for computerization will be enormous. Worldwide adoption would represent an important beginning to a new rationalization of international trade procedures. Symbolically, the Harmonized System reinforces the concept of a single economic world.

We feel, further, that at a time of real stress in the world trading system, adoption of the HS will be a welcome and important sign of continuing international cooperation, compromise, and dedication to an open trading system.

We also believe that since there is no conceptual objection to the Harmonized System, and since U.S. exporters and importers have had real opportunity to be part of the process, the U.S. has an obligation to the rest of the world to adopt the Harmonized System and join most of the other trading nations in its implementation.

On the process of adoption, we hope that a legislative method to avoid change or amendment will be adopted. We hope that the Harmonized System will be implemented on January 1, 1988. The difficulties inherent in such a change will create many problems for importers, exporters, and Customs, but we don't believe that delay will help.

In short, it will be awful whenever it takes place—so the sooner the better.

We wish to call the Committee's attention to the outstanding achievement of the relatively few people who have kept the process open and transparent, and have done the work of negotiating compromises and consensus-building in the United States and internationally. Those at the International Trade Commission, Customs, and the Office of the United States Trade Representative, all who are responsible for development of the Harmonized System, deserve our appreciation for this formidable achievement.

The United States deserves the benefits available through adoption of the Harmonized System. We hope Congress will take that step very soon.

Once again, thank you for the opportunity to present our views.

Senator MATSUNAGA. Thank you very much, Mr. Rowland. And now we shall hear from Dr. Meister.

[The prepared written statement of Mr. Ted Rowland follows:]

IFA **International Footwear Association**
47 West 34th Street, Suite 804
New York, New York 10001
(212) 714-2399

April 23, 1987

TESTIMONY
ON THE HARMONIZED SYSTEM
BEFORE THE TRADE SUBCOMMITTEE
COMMITTEE ON FINANCE
UNITED STATES SENATE
BY
THE INTERNATIONAL FOOTWEAR ASSOCIATION

I am Ted Rowland, Executive Director of the International Footwear Association, known as IFA. IFA represents U.S. companies which import completed footwear. At present we have forty-five corporate members responsible for perhaps 20% of all footwear imports into the U.S.

We appreciate this opportunity to appear before the Subcommittee. We support the Harmonized System in principle, and we urge its adoption on January 1, 1987.

Although we are critical of many aspects of the HS as it applies to footwear (Chapter 64), our testimony today is aimed at adoption, rather than objection. At the U.S. national level -- beyond the first six digits -- Chapter 64 retains all of the incredibly difficult concepts, all of the inordinately confusing and incomprehensible language and all of the protection of the present Tariff Schedules. Our efforts to end the costly burden of protection on U.S. consumers and industry will increase in future years, but the protection and our efforts against it have nothing to do with the Harmonized System.

In the case of Chapter 64, the HS goal of maintenance of duty rates, including those protective in nature, has been fulfilled. But the goal of simplification has been missed entirely. We hope to improve that in the future.

We support implementation of the HS despite our problems because the HS makes good sense, and because it will make the complex procedures of trade more efficient. We hope someday that its use will extend to other areas of trade, such as transportation and domestic classification of goods and production. Symbolically, the HS reinforces the concept of a single economic world. More than that, the international character of the HS underlines the fact that the United States is now one leader among several, one player among many in a very complex and very competitive world economy whose structure is changing rapidly.

Without trying to raise adoption of the HS to an undeserved level of importance, we want to point out, too, that we believe the U.S. has an obligation to the rest of the world to implement this program now, after all the years of negotiation, compromise and resolution. Further, at a time of real stress in the world trading system, adoption of the HS by most of the trading nations on earth will be a welcome and important sign of continuing international cooperation, compromise and dedication to an open trading system.

As a whole, there is no reason that we can think of to avoid or delay implementation of the Harmonized System. Since the HS is the result of international negotiations, and dependent upon acceptance in part of identical language and numerical designation by all participants, we urge a legislative process for adoption which will not permit amendment.

Lastly, we want to take this opportunity to address the remarkable role played by those at the International Trade Commission, the United States Customs Service and the Office of the United States Trade Representative who did the work, the negotiating, and the consensus-building which has produced this formidable document. This very small group of dedicated people, with little support and inadequate resources, kept the process open, transparent and moving, negotiating compromises among very competitive parties in the area of their most fundamental self-interest, here in the United States and in Geneva and Brussels. These people deserve a great deal of recognition.

Once again, thank you for permitting us to appear. Adoption of the Harmonized System is important as a symbol. It is worthwhile in the sense of procedural efficiency. It provides a basis for further rationalization and improvement. It is a singular achievement in a difficult time, and its adoption will fulfill a national obligation.

STATEMENT OF DR. IRENE W. MEISTER, VICE PRESIDENT, INTERNATIONAL, AMERICAN PAPER INSTITUTE, INC.; NEW YORK, NY

Dr. **Meister**. Thank you, Mr. Chairman.

I am Irene Meister, Vice President, International, of the American Paper Institute (API). I am also Chairman of the Industry Sector Advisory Committee on Paper and Paper Products.

API is the national trade association representing companies that account for more than 90 percent of U.S. production of pulp, paper, and paperboard; and in 1986, total shipments of the paper and allied products industry exceeded $109 billion.

This is a summary, Mr. Chairman, of our written testimony.

Today I would like to explain to you why, until recently, we have strongly supported adoption of the Harmonized System, but now have serious reservations about it. Those reservations relate directly to our ability to export, rather than to the conversion of the tariff schedule of the United States.

International tariff classifications, definitions, and nomenclature used by the trading nations are important instruments of international commerce. Diverse structures of existing systems used by different countries are a limiting factor in the growth of international trade.

And for this reason, API has not only strongly supported development of the Harmonized System, but actively participated in its development. However, the paper industry's support for the United States adoption of the Harmonized System was based on the expectation that other countries would adopt the structure and definitions as agreed in the Harmonized System Committee in their entirety without trade distorting amendments. Unfortunately, this is not the case in the European Community's conversion as it relates to our major export products: kraft paper and paperboard.

Examples of kraft paper and board are the inner and outer lining of corrugated boxes, bleached board used in solid and liquid food packaging, and saturating kraft used in such products as decorative laminates.

Under the present definition of the European Community, for a paper product to be classified as kraft, it must contain more than 80 percent softwood fiber. This is a completely outmoded, unsound definition and bears no relationship to the quality or performance characteristics of the products. Rather, it is simply a protectionist device.

The kraft definition was discussed within the Harmonized System Committee for nearly two years, and in 1978 all parties, including the EC, agreed on a new definition that would drop that requirement and substitute certain quality specifications to maintain performance characteristics. This new definition, in its totality, was acceptable to the United States industry, and under the proposed EC conversion this new definition is not being implemented as intended.

Therefore, Mr. Chairman, competitiveness of our companies has been unfairly affected, and this situation—unless resolved in the present negotiations—will get worse. Let me explain.

The kraft issue is a carry-over from the Tokyo Round negotiations. The EC Commission has promised in an exchange of letters to resolve it shortly after conclusion. This, however, did not take place; and on several occasions then, the officials of the Commission indicated that they will adopt this definition through the incorporation of the new rules in the Customs Corporation Council Harmonized System.

Our industry has patiently waited for seven years. It now appears that the EC has reneged on its assurances. While adopting the definition of kraft for the chapter headings, the EC has in fact retained the restricted annex for the products with more than 80 percent softwood content. This would effectively perpetuate the adverse tariff treatment of our exports, which are quite large and important.

This, of course, totally violates the spirit of the agreement reached in 1978 in the Harmonized System Committee and in the subsequent exchange of letters.

API has urged the U.S. Trade Representative to make resolution of this problem a priority in the ongoing Harmonized System negotiations in Geneva. And so far, as we understand it, the EC has not agreed yet to accede to the U.S. request.

This issue is of major importance to our industry, and unless this problem is resolved, our industry will find it difficult to support the adoption of the new Harmonized System. If it is resolved, on the other hand, the U.S. paper industry will wholeheartedly welcome the new system.

I thank you, Mr. Chairman.

[The prepared written statement of Dr. Irene W. Meister follows:]

PRESENTED BY
DR. IRENE W. MEISTER
VICE PRESIDENT, INTERNATIONAL
AMERICAN PAPER INSITUTE, INC.

My name is Irene W. Meister. I am Vice President, International, of the American Paper Institute (API). I am also Chairman of the Industry Sector Advisory Committee on Paper and Paper Products, ISAC No. 12. In API testimony today I would like to explain to this Committee why, until recently, we have strongly supported adoption of the Harmonized System, but now have serious reservations about it.

API is the national trade association representing companies that account for over 90% of U.S. production of pulp, paper and paperboard. In 1986, shipments of the paper and allied products industry exceeded $109 billion.

To put our industry's international trade position into perspective, let me mention that in 1975 our industry exported 6.7 million tons of products. In 1986, these export shipments rose to 13.2 million tons. Since under normal currency conditions the U.S. paper industry is a low-cost producer, we expect that the expansion of our exports will continue.

In addition to our direct exports which in 1986 amounted to nearly $5 billion, we have another reason to be interested in an effective trading system. Our industry is uniquely dependent on indirect exports which we define as domestic sales of the paper industry that take place because of export demand for products of another industry. Packaging for products that enter international commerce, paper used in export documentation, and components such as filters that leave the country as part of exported products are examples of indirect exports. In 1979, the last time that we carried out a survey, we estimated that such indirect exports of the paper industry amounted to about $10 billion. They are certainly much larger now.

International tariff classifications, definitions, and nomenclature used by the trading nations are important instruments of international trade. Diverse structures of existing systems used by different countries are a limiting factor to the growth of international trade.

For this reason, API has strongly supported the development of the Harmonized Commodity Description and Coding System, or Harmonized System, within the Customs Cooperation Council (CCC). Since 1975, our industry has actively participated in the work of U.S. representatives to the CCC's Harmonized System Committee by providing continued advice to the U.S. delegation and participating in meetings in Brussels. We feel that our government representatives developed a good understanding of our needs. We have also worked closely with our Government on the conversion of the U.S. Tariff Schedules and are basically satisfied with the outcome.

The worldwide adoption of the Harmonized System would mean that a paper product moving in international trade would have a single tariff designation and a uniform definition. This would greatly assist not only in determining the rate of duty applicable to a U.S. export in a foreign country, but would also make it easier for an American company to do foreign market research and to better monitor the influx of competitive products into the U.S.

However, the paper industry's support for the U.S. adoption of the Harmonized System was based on the expectation that other countries would adopt the structure and definitions as agreed in the Harmonized System Committee in their entirety without trade distorting amendments. Unfortunately, this does not seem to be the case in the European Community's conversion as it relates to our major export products: kraft paper and paperboard. Examples of kraft products are: linerboard used as inner and outer facing in corrugated boxes, bleached paperboard used mostly in food packaging such as milk cartons and frozen foods, and saturating kraft used as a component in decorative laminates.

Under the present EC definition, for a paper product to be classified as "kraft," it must contain more than 80% softwood fiber. Thus products having more than 20% hardwood fiber are not considered "kraft" by the EC. This softwood fiber requirement is technologically unsound and bears no relationship to the quality or performance characteristics of the products. Rather, it is a protectionist device.

The kraft definition was discussed within the Harmonized System Committee for nearly two years and in 1978 all parties, including the EC, agreed on a new definition that would drop the softwood requirement and would substitute certain quality specifications intended to maintain the performance characteristics of kraft products. This new definition in its totality was acceptable to the U.S. industry. Under the proposed EC conversion this definition is not being implemented as intended creating major problems for our exporting companies. Let me explain:

During the Tokyo Round, concessions were obtained from the EC for the total kraft category. We have stressed at the time that these concessions would be impaired if the EC continued to apply its technologically unsound definition. Specifically, U.S. kraft exporters which do not meet the EC's outdated requirement face a 9% duty in the Community -- 3 percentage points higher than the 6% duty agreed upon for kraft products during the Tokyo Round. In other words, American-produced products that are recognized around the world as kraft are not treated as such by the EC. Significantly, our major competitors in the kraft market, the Nordic countries and Brazil, are not required to meet this restrictive definition, since their products enter the EC duty free regardless of fiber content.

The practical impact of this is very real and damaging to U.S. interests. Some highly competitive mills producing kraft linerboard have been prevented from exporting to the EC at great economic cost. Other mills, while still exporting certain other kraft products, such as uncoated bleached paperboard and saturating kraft, are facing serious competitive problems because of the higher duty. As more mills switch to higher hardwood content, the situation will become even more serious.

The kraft definition, itself, as adopted by the HS Committee in 1978, was the subject of U.S.-EC negotiations during the Tokyo Round. At the end of the Round, in an exchange of letters between Commissioner Etienne Davignon and the Deputy Special Trade Representative Alonzo McDonald, the European Commission stated that it will endeavor to promptly resolve the kraft definition problem in the United States' favor. We expected that the definition agreed upon in 1978 would be adopted promptly by the EC as promised. This, however, was not accomplished, but on several occasions officials of the Commission indicated to the U.S. government and to the U.S. paper industry that at the latest this question would be positively resolved when the new Harmonized System was adopted.

Our industry has patiently waited for 7 years. It now appears that the EC has no intention of living up to its assurances. While adopting the HS definition of kraft for the chapter headings, the EC has in fact retained the restriction based on fiber content by subdividing in a separate annex kraft products into those with more than 80% softwood fiber and those with less than 80% and giving these two categories different tariff levels. This would effectively perpetuate the adverse tariff treatment on an important industry export. This, of course, totally violates the spirit of the agreement reached in 1978 in the Harmonized System Committee and in the subsequent exchange of letters.

API has urged the U.S. Trade Representative to make resolution of this problem a top priority in the on-going Harmonized System negotiations in Geneva with the EC. So far, we understand that the EC has not acceded to the U.S. request. Unless this problem is resolved our industry will find it difficult to support the adoption of the new Harmonized System. If it is resolved, the U.S. paper industry will wholeheartedly support adoption of the Harmonized System by the United States.

Senator **Matsunaga**. Thank you very much, Dr. Meister.

Then, is it my understanding, Dr. Meister, that the EC alone is raising problems insofar as a definition of your paper products go?

Dr. **Meister**. Yes, Mr. Chairman. We had no problem with other countries. The world recognizes kraft as a product that has certain performance characteristics—technology has changed drastically. Hardwood is being used now in a production that actually some of the products are better that way.

It is simply totally outmoded and it is completely unfound. And, yes indeed, the European Community is the only one that has it now.

Senator **Matsunaga**. What position has the Administration taken on his?

Dr. **Meister**. We understand that the Administration is making a major effort to resolve that issue with the Community. And we hope that they might be successful, but we are very concerned, because for us lack of the solution would mean a very serious hardship.

Senator **Matsunaga**. And you have expressed your concern to the Administration?

Dr. **Meister**. Indeed we have. And I am quite sure that they are aware of it, but it is now the other side that has to act.

Senator **Matsunaga**. Now, Dr. Freund, you seem to be very much concerned about the change from chief value to chief weight. I am told that the chief value method would permit a greater risk of fraud than the chief weight system. What is your view on that?

Mr. **Freund**. Well, we have no problem with the change to chief weight, provided adjustments are made so that it ends up duty neutral. The way it is written now in certain categories, it will create additional duty burden on the apparel industry.

Senator **Matsunaga**. $30 million you said.

Mr. **Freund**. Yes, that is correct.

Senator **Matsunaga**. Per year.

Mr. **Freund**. Yes sir.

Senator **Matsunaga**. So, do you have any suggestions as to how that can be accomplished?

Mr. **Freund**. Yes, I think it can be accomplished very easily if someone will sit down and work out the numbers and adjust the tariffs accordingly.

Senator **Matsunaga**. Does the Administration know of your viewpoint?

Mr. **Freund**. Yes sir, they do.

Senator **Matsunaga**. And are they trying to work out some figure?

Mr. **Freund**. We haven't heard any encouragement in that direction, Senator.

Senator **Matsunaga**. But if they can make it revenue neutral, then you are not opposed to the Harmonized System.

Mr. **Freund**. That is correct. We would support it. We support it in concept. It is just these problems that we are concerned about.

Senator **Matsunaga**. Assuming that this problem is resolved—that the Administration does come forth with some agreement which would make it revenue neutral—would you still propose a waiting period before the effective date of the Harmonized System?

Mr. FREUND. Yes, Mr. Chairman. I would like to point out that importers are already placing commitments right now for delivery in 1988 without knowing the full implications and impact of the Harmonized System. And it just seems unfair that they have to work in this uncertain environment.

Senator MATSUNAGA. And Mr. Kaplan, as I understand from your testimony, you propose a delay of six months of the implementation of the Harmonized System?

Mr. KAPLAN. Yes, Senator. We believe that that kind of delay, plus added support in the form of trained personnel, would be sufficient to permit a smooth transition.

Senator MATSUNAGA. And have you been in touch with the Administration with this point?

Mr. KAPLAN. Yes, we have. We have written to the United States Trade Representative, Mr. Senator.

Senator MATSUNAGA. And do you feel that industry will need as much education as the Customs Service, so that the six months will allow this learning period?

Mr. KAPLAN. We believe a six-month period is sufficient for both sides. I am not in a position to address myself to how much training Customs personnel need.

Senator MATSUNAGA. Do you think the business sector can be ready in six months?

Mr. KAPLAN. Yes, we do.

Senator MATSUNAGA. That is six months beyond January 1, 1988?

Mr. KAPLAN. It would be six months from the date of proclamation. We anticipate the proclamation would not occur prior to January 1, 1988.

Senator MATSUNAGA. I see.

Mr. KAPLAN. But if the system were ready to be proclaimed earlier than that, the important thing is that there be an adequate time from the date of proclamation until the date of utilization.

Senator MATSUNAGA. Now, Mr. Henriques, are you of the same view relative to the postponement of the effective date, or are you in full support of the effective date of January 1, 1988?

Mr. HENRIQUES. We may be in a more advantageous position than some of our brothers in the industry. We are ready to go today.

Senator MATSUNAGA. I see. And, as I understand it, Mr. ROWLAND, you are of that same position as Mr. Henriques?

MR. ROWLAND. Yes, for two reasons. One, we have—our problems are not as severe as the apparel people, and we are helping the footwear industry to get ready. And I am also too cynical to believe that, given a delay, everybody will do what is supposed to be done in the time of delay so that it will be used for the purpose of effective implementation.

Senator MATSUNAGA. And, Mr. Kumm, as I understand it, you approve of an early adoption, and what about the six-month delay proposal?

Mr. KUMM. Well, I would like to qualify that by saying that you should have at least a six-month period to educate and to convert over the system, both governmental and within private industry. Hopefully, I think the expectation might be that we would be able to obtain the adoption before July 1 of this year—I don't know if that is even practical to assume that, but if that target date was established, why you could still meet the January 1, 1988 requirements and also which would be a good time to start a system—at the beginning of the year—and still meet the requests of the various individuals in the panel that there be a six-month lead time. I would like to mention that our company exports about 110,000 different products, and we started to re-classify based upon what we knew at the time in May of 1986. And it took us until December of 1986 to complete the conversion, because we had to then have the time to work with our companies overseas to have them—you might say—be in concert with our centralized classification decision.

So, it was not a case of just implementing it here—it was a case of having uniformity so that if we classify a product in 6 digits in the United States for import and export purposes, that that same 6 digits would be used when we import that product into the EC or into the Asian countries, or export it from those countries.

So, there is a transition period. And, it is not going to be easy. I think that on something like this, procrastination can set in very easily, but I think it is inevitable—we might as well get it done, we might as well get it over with. Automation requires it. Trade facilitation simplification requires it. Paperless societies require it. And it has been—you might say—the U.S. system and the Canadian system and other systems have been somewhat of a deterrent to that effectiveness over the years.

Senator MATSUNAGA. My concern is what the delay in U.S. implementation would mean with regard to United States obligations to other countries. Now, Dr. Meister, you say you have been very much involved in formulation of the Harmonized System. Do you see any problems in that?

Dr. MEISTER. Mr. Chairman, I think everyone has been preparing for this system, and a few of us anticipated that there would be problems, as I described today. Obviously, from my industry's standpoint, we do not wish the system adopted until those basic problems for exports are resolved.

We do have a tremendous trade deficit; we do need to export; we can export; my industry is extraordinarily cost competitive, able to export—but we are handicapped, and we are going to be much more handicapped in the future.

So, for us, it is a problem. If that can be resolved, I think we all would work terribly hard to make the necessary adjustments, to train the people, and to assist in the total implementation of the system. But, those problems are very real and very significant. So, we hope that the trading partners, such as the EC, who also would greatly benefit from the system, do realize that they have to make certain adjustments and they have to make some compromises as well.

It is in their interest as well as ours.

Senator MATSUNAGA. Now, relative to the legislative approach, Mr. Freund, do you believe that the Administration's proposal is preferable to that of the House in H.R. 3?

Mr. FREUND. Are you talking about the fast track?

Senator MATSUNAGA. Yes.

Mr. FREUND. Yes. That is fine.

Senator MATSUNAGA. You prefer the Administration's proposal?

Mr. FREUND. We agree with that.

Senator MATSUNAGA. And what about Mr. Kaplan? Which do you prefer?

Mr. KAPLAN. We prefer the President's—we prefer the Administration's proposal. We object to the things in the President's proposal that we mentioned in our testimony. A lot of the talk that I think has been expressed today about the question of delay in implementation reflects the 15-day period provided for in the Administration's proposal. But, in principle, we prefer the Administration's proposal.

Senator MATSUNAGA. I see. Mr. Henriques?

Mr. HENRIQUES. We too prefer the Administration's proposal.

Senator MATSUNAGA. Mr. Rowland?

Mr. ROWLAND. We prefer the Administration's proposal, but the best expression would be that we would prefer to see the Harmonized System move on its own under a fast track provision now.

Senator MATSUNAGA. Mr. Kumm?

Mr. KUMM. Well, the Administration's proposal is, you might say, the quickest or simplest way of accomplishing this, but, any way that gets the system in place quickly is our interest.

Senator MATSUNAGA. Dr. Meister?

Dr. MEISTER. Mr. Chairman, if the problems can be resolved that I have mentioned, then we feel the faster the better, because the system is, per se, needed. But we certainly, as I indicated, would not support it until they are resolved.

Senator MATSUNAGA. Does anybody have anything else to add before I thank you for coming and recess the hearings?

Mr. KAPLAN. Just to thank you again for calling the hearing.

Senator MATSUNAGA. Well, I thank you very much for taking the time out to come before the subcommittee. And your written statement will appear in the record as though present in full, in addition to your oral testimony.

And I thank you, one and all, for coming.

The subcommittee stands in recess, subject to the call of the chair.

[Whereupon, at 4:14 p.m., the hearing was concluded.]

[By direction of the chairman the following communications were made a part of the hearing record:]

COMMENTS ON BEHALF OF
THE ALUMINUM ASSOCIATION, INC.
ON
TARIFF SCHEDULE OF THE UNITED STATES ANNOTATED, converted to the Harmonized System and reflecting final MTN concession rates of duty. (October 1986)

April 27, 1987

INTRODUCTION

The Aluminum Association, Inc. is commenting on product definitions contained in Chapter 76: Aluminum and Articles Thereof, of the Tariff Schedules of the United States converted in to the nomenclature structure of the harmonized commodity description and coding system (harmonized system).

The Aluminum Association is the primary source for statistics, standards and information on aluminum and the aluminum industry in the United States. Its membership represents virtually all the domestic producers of primary ingot; it also accounts for approximately 85% of the shipments of U.S. semifabricated (mill) products. Its 88 member companies represent, in addition to producers of primary ingot and semifabricated products, casting foundries, secondary smelters and producers of aluminum master alloys and additives.

The Association supports the adoption of this treaty which would continue the United States as an active participant in the international effort to construct and administer an international tariff classification system which is intended to make trade documentation simpler, reduce the probability of trade disputes and encourage the use of automated transmission of trade data. The U.S. aluminum industry has a large stake in international trade and will gain in the achievement of the purposes of the Harmonized System.

While our industry supports the Harmonized System, it does have very serious concerns about the specifics of the recommended conversion.

SUMMARY OF COMMENTS

It is apparent from the changes presented in Chapter 76: Aluminum and Articles Thereof that basic judgments and decisions were made affecting aluminum products without recognition or acknowledgement of the U.S. aluminum industry's and the federal government's long-standing and logical system for classifying aluminum products. In addition, the changes do not appropriately reflect definitions used by the producers and users of aluminum in commercial transactions and recognition of our nation's position as the world's largest aluminum market.

The schedules, as recommended, significantly alter the characterization of several of the major aluminum product forms and force a change in domestic product and export trade classifications at tremendous inconvenience and expense to our government, the U.S. aluminum industry and its customers.

The Aluminum Association is particularly concerned with the following definitional and dimensional changes:

1. The definitional distinction between "Rods and Bars" and "Wire" which, regardless of cross-sectional dimensions, states that any such product which is "in coils" is, ipso facto, wire, and all straight lengths are bars and rods.

2. A requirement for a distinction between "aluminum, not alloyed" and "aluminum alloys" for most of the major semifabricated products when there

appears to be no practical or commercial justification for the separation in most cases and especially when the rates of duty are the same.

3. The thickness "break", between aluminum sheet and foil at 0.2 mm, which is 0.05 mm higher than the U.S. industry classification.

In addition, the proposed nomenclature does not, in several cases, reflect terminology used by United States producers and users of aluminum in commercial transactions. For example, the term "strip" (in 7606) is a steel industry description of products which are commonly referred to in the aluminum industry as "coiled sheet". And "wire" by the proposed TSUSA definition is not dimensionally different from any dimension of much larger and heavier rod.

These same (domestic) definitions have long been employed in the economic censuses conducted by the Bureau of the Census and form the basis for most of the Standard Industrial Classification (S.I.C.) of U.S. industry sectors.

It seems inappropriate for the United States government to propose changing aluminum product definitions and classifications in U.S. tariff schedules which ignore this nation's position as the world's largest aluminum market, in favor of definitions that do not reflect U.S. aluminum terms and nomenclature.

The United States is the world's largest market for aluminum products with a 1985 consumption of 7.0 million short tons. No other country comes close; Japan ranks second with 2.7 million tons and West Germany next at 1.6 million tons. Consumption by all the EEC and EFTA countries combined was only about two thirds that of the U.S.

Impact on Statistics

The U.S. government and the aluminum industry have developed an extensive statistical reporting system based on an appropriate set of aluminum product definitions. This system has evolved over the past 40 years. Some of the product definitions and dimensions contained in Chapter 76 significantly alter the characterization of various aluminum products. There would be a definite break in the consistent statistical data base of the aluminum industry. These proposed changes would cause an undue burden on companies, analysts and even the government itself because the new international trade statistics would not be comparable with prior international and domestic statistics. In order to establish meaningful comparability, it will be necessary to change the product definitions used for domestic business and those used for export trade to conform to the new international trade definitions. These changes will come only at tremendous inconvenience and expense to the U.S. government and the domestic aluminum industry.

Additionally, inherent in the proposed revision is conversion to metric units of quantity measurement which will cause further undue burden on both governmental agencies and aluminum producers realignment of all types of publications and data bases.

SPECIAL COMMENTS

The following are The Association's comments regarding the specific schedule items.

Chapter 76, page 76-1

Note:

1. In this chapter the following expressions have the meanings hereby assigned to them:

   a. Bars and rods ....

The definition describes bars and rods (as well as wire) by "mode of presentation". Apparently, regardless of cross-sectional size, any such product which is in coils is, ipso facto, defined as wire, and all straight lengths are, of necessity, bars and rods.

These definitions do not reflect commercial reality in the aluminum bar, rod and wire business. We are unaware of any instance in which these aluminum products are described in this fashion in business transactions in the United States or abroad.

In the United States, the differentiation between bars and rods on the one hand, and wire on the other, has traditionally been solely by cross-sectional dimension. The Aluminum Association is concerned about the establishment of a higher dimension (10 mm) as the distinction between bars and rods vs. wire. The standard United States separation between aluminum rod (and bar) and wire is .375 inches. The nearest metric measurement is 9.5 mm. The phrase "not in coils" should be deleted.

It is also noted that the definition of bars includes the statement: "the thickness of such products which have a rectangular (including "modified rectangular") cross-section exceeds 1/10 of the width". No reason is stated for this new description and we see no need for it.

(c) Wire

Wire should be defined by cross-sectional dimension and not by "mode of presentation". The historic method employed in the United States explicitly defines wire as being less than 3/8 inch (9.5 mm is equal to .3740 inches).

The phrase "in coils" should be deleted from the wire description. The distinction that wire is only in coils and bars and rods can only be straight length products is untenable. All other definitional descriptive points employed in the schedule adequately separate bars and rods and wire from the "flat-surfaced" products, but the distinction between bars and rods, on the one hand, and wire, on the other, has always been by cross-sectional dimension.

Aluminum, Not Alloyed and Aluminum Alloys

The distinction between "aluminum, not alloyed" and "aluminum alloys" is proposed to apply to most aluminum products, especially mill (or semifabricated) products. No reason has been given for this change from the existing TSUSA and we are aware of no practical justification for this proposal.

This distinction may make the work of customs officers more difficult. Aluminum mill products can be made from a wide variety of alloys. As proposed, the "Not alloyed" distinction would appear to cover the entire 1000 series alloys. However, the 1350 series alloys could be used to produce electrical conductor redraw rod (drawing stock). Similarly, redraw rod can be produced from a number of other alloy series. It is difficult to see how custom officials could distinguish between "aluminum alloy" rod and "not alloyed" rod.

Accordingly we recommend that at the earliest possible opportunity this alloy distinction be removed from the following scheduled items in recognition of its lack of significance and in the interest of simplifying the schedule:

7604	Bars, rods and profiles
7605	Wire
7606	Plates, sheet and strip
7608	Tubes and pipes

Item 7606 - Aluminum Plates, Sheets and Strips

The Aluminum Association is concerned about the establishment of a higher thickness minimum of 0.20 mm for "plates, sheets and strip". It should be "0.15 mm and greater". The standard United States separation between aluminum sheet and aluminum foil is 0.006 inches. The nearest metric measurement is 0.15 mm.

A considerable volume of aluminum product shipments are involved in the 0.05 mm range between 0.15 and 0.20 mm. Applications of aluminum sheet in the 0.15 mm to 0.20 mm gauge include can body and stock, fin stock for radiators and air conditioning, lithoplate, and sheet for semi-rigid food containers.

Aluminum flat rolled products account for more than half of the total output of the United States aluminum industry and the statistics extend back to the early post World War II years. Any change to the basic relationship of the products themselves will cause havoc in comparability of statistics.

The Bureau of the Census defines aluminum sheet as of "0.006 inch thickness but under 0.250 inch thickness", in the statistical reports it prepares for the Office of Industrial Mobilization and industry under authority of the Defense Production Act of 1950. The same distinction is also employed in measuring the output of the SIC 3353 industry in the economic censuses conducted periodically.

Item 7607 - Aluminum Foil

Comments regarding item 7606 are applicable to the foil maximum thickness. We believe that foil should be "less than 0.15 mm".

CONCLUSION

We appreciate the opportunity to express the support of the Aluminum Association and its member companies for the harmonized system. We look forward to working with The International Trade Commission and the U.S. Trade Representative's Office in resolving at the earliest opportunity the difficulties posed by several of the definitions contained in the schedules on aluminum products.

American Iron and Steel Institute
1000 16th Street N.W., Washington, D.C. 20036

Milton Deaner
President
(202) 452-7146

April 30, 1987

Senator Spark Matsunaga
Chairman of the Senate Finance Committee
Subcommittee on International Trade
SD-205 Dirksen Senate Office Building
Washington, D. C. 20510

Ref: Subcommittee Hearing on the Harmonized System
April 27, 1987

Dear Senator Matsunaga:

The American Iron and Steel Institute (AISI), which represents companies which produce about 80% of the Raw Steel in the United States, strongly supports the adoption of the Harmonized Commodity Description and Coding System.

The steel industry through the AISI has been actively involved in the development of the Harmonized System since its inception, and we have already devoted several man years to this project. It has been the industry's primary objective to shape this system so that it would conform to domestic commercial practice.

The steel industry organized a task force from the Committee on Commercial Research which worked closely with the ITC staff to explore ways to implement our objective. Needless to say, we did not get everything we wanted. But then, neither did any other country. Although the system is a compromise, it is one which is closer to commercial practice than the current TSUSA and we believe that the advantages of a standardized system used by all major trading countries will outweigh its shortcomings.

In this connection, we have correlated our reporting instructions for the reporting of steel production and shipment statistics to AISI with the Harmonized System. These have been issued to the approximately 150 participating steel companies to become effective January 1, 1988 on the assumption that Congress will approve the adoption of the system and it will be implemented on that date.

Sincerely,

Milton Deaner

Milton Deaner

MD:pf

COMMENTS SUBMITTED ON BEHALF OF

EUROPE CRAFT IMPORTS, INC.

By

Rode & Qualey
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to the

United States Senate Committee on Finance
Subcommittee on International Trade

Concerning Implementation of the

HARMONIZED SYSTEM

DRAFT

On behalf of Europe Craft Imports, Inc. (hereafter: "Europe Craft"), we submit the following comments in response to press release No. H-38, dated April 6, 1987, soliciting comments on the proposed Conversion of the Tariff Schedules of the United States into the Nomenclature Structure of the Harmonized System, October 1986 ed., in connection with a hearing on this issue held before the United States Senate Committee on Finance, Subcommittee on International Trade on April 27, 1987.

Europe Craft

Europe Craft is a major importer of men's wearing apparel including heavy and lightweight jackets and knit shirts composed of cotton, wool and man-made fibers and blends of these fibers as well as garments consisting of silk, linen or ramie fiber.

Europe Craft recognizes the importance in adopting the Harmonized System as a means of facilitating international trade. Because it is an international system of classification that will also be used by our trading partners, it is superior in many respects to the tariff schedules which it is intended to replace. Yet, fundamental defects remain in the proposed section on textiles and apparel, which make Europe Craft unable to endorse its adoption.

We understand that a negotiating team from the United States currently is meeting in Geneva to identify and correct all unintended increases in duty rates contained in the proposed Harmonized System. Thus, the final shape of the section on textiles and apparel remains unknown. For purposes of these comments, Europe Craft assumes that many of our concerns will not be corrected during the negotiating sessions in Geneva.

Impact of Increased Duties

When the President authorized the preparation of a draft conversion to the Harmonized System, the conversion was intended to be revenue neutral. The section on textiles and wearing apparel contained in the latest draft conversion, dated October 1986, does not accomplish this objective. We will describe below some of the more glaring examples of increased duty rates on textiles and apparel. If these concerns are not addressed, the burden imposed by the Harmonized System will add increased duties reported to be as much as thirty million dollars a year, and, consequently increase the costs of importing textiles and apparel. The hardship of increased duties will be suffered ultimately by the consumer of textiles and apparel.

A. Ornamentation

Although Europe Craft approves of the elimination of the troublesome concept of ornamentation under the Harmonized System, it strongly objects to the simplistic methodology employed for purposes of calculating the proposed duty rates which ignores commercial realities and violates the fundamental premise that the conversion be revenue neutral.

As an importer of mostly non-ornamented wearing apparel, Europe Craft will incur increased costs in conjunction with higher duty rates resulting from the merger of duty rates on ornamented and non-ornamented apparel. Under the tariff schedules, wearing apparel that is considered by Customs to be ornamented is generally subject to a higher tariff rate than non-ornamented wearing apparel. What has happened is the duty rate proposed on merged ornamented and non-ornamented apparel represents an arithmetic average of the existing rates for non-ornamented garments and ornamented garments that results in a reduction of the current rate for ornamented apparel and an increase in the rate for non-ornamented apparel. This would be acceptable if total imports of ornamented apparel were equivalent to imports of non-ornamented apparel, since the respective rate changes would effectively cancel each other out. However, since ornamented garments represent an extremely small proportion of the total garments imported into the United States the average rate proposed results in an enormous increase in the amount of duties which will be collected with respect to apparel imports.

For a company like Europe Craft whose imports consist mostly of non-ornamented garments, the rate of duty will increase substantially, resulting in a cost increase across its product line. For example, men's and boy's cotton woven coats carry current duty rates of 21% when ornamented and 8% when non-ornamented. Under the Harmonized System, the proposed duty rate will be an arithmetic average, i.e., 14.5% ad valorem. This, obviously, represents a significant increase in duty to the importer of non-ornamented apparel. In order for the Harmonized System rate to comply with the requirement of revenue neutrality, it is necessary to take into account the fact that imports of such coats which are non-ornamented greatly exceed imports of such ornamented products. If a trade-weighted average is used to calculate the duty rate on men's and boys' cotton woven coats, the duty rate would be approximately 8.6 percent ad valorem. Trade statistics are readily available to establish the relative proportion of ornamented and non-ornamented apparel imports. These ratios must be applied for purposes of correcting the proposed Harmonized System apparel rates in order to prevent unauthorized revenue windfalls and unintended financial hardships to importers and consumers.

It has been brought to our attention that the U.S. negotiators in Geneva will propose a reduction in the duty differential on the affected apparel. Without knowing what the final rate will be under the conversion, we reserve judgment as to whether it will be adequate to eliminate our objections in this area.

B. Coated Wearing Apparel

Another major area of concern for Europe Craft is the classification of coated wearing apparel. Under the Harmonized System, the duty assessed on coated apparel is significantly less than apparel that is not regarded as coated. For example, under the Harmonized System coated rainwear will be assessed a duty rate of 7.6% ad valorem. This is also the rate currently applicable to coated rainwear in the TSUS. Non-coated garments will be assessed a duty rate of 14.5%. Although the goal of revenue neutrality would appear to be achieved since the rate of duty is not changed for "coated" rainwear, this is actually not the case because the Harmonized System's new definition of "coated" will result in significant duty increases.

Legal note 2(a) in chapter 59 of the Harmonized System, specifies that a coated fabric must be "coated, covered, or laminated with plastics that can be seen with the naked eye". Thus, a fabric will not be regarded as coated under the Harmonized System if the coating itself cannot be seen with the naked eye. The proposed standard for coated apparel under the Harmonized System is a test that is much more difficult to satisfy than the standard used under the present tariff schedules. As held by the Court in H. Rosenthal Company v. United States, 67 CCPA 8, C.A.D. 1236 (1979) and by the Customs Service in T.D. 81-219, in order to be considered a coated fabric, the surface of the fabric must be visibly affected by the coating. Compliance with this standard would be indicated if the fabric appears visibly stiffer than the uncoated fabric. There is no requirement that the coating itself be visible, only the coating's effect on the fabric surface must be apparent. Accordingly, it is evident that the proposed definition of "coated" in the Harmonized System and the applicable duty rates will result in a significant change in the current tariff treatment of "coated" apparel.

C. Chief Weight Methodology

Europe Craft will be severely affected by the proposed change to a chief weight standard in determining the classification of textile fiber blends. For example, under the tariff schedules a men's sweater that is manufactured from a fabric that is a blend of 40 percent wool and 60 percent man-made fibers by weight is classifiable as a men's sweater of wool with a duty rate of 17 percent ad valorem, because wool has the higher value of the two fibers. The same sweater under the Harmonized System would be classifiable as a sweater of man-made fibers with a duty rate of 34.6 percent ad valorem, because the sweater is in chief weight of that fiber. Revisions must be made in order to prevent such massive increases in the duty rates.

Moreover, we have reason to believe that the Customs Service has not yet determined whether linings and interlinings are to be considered in making a chief weight determination. Without this essential piece of information, Europe Craft will have no assurance that the goods it orders will be regarded as articles in chief weight of a specific fiber which, in turn, has implications for quota as well as duty purposes.

D. Quota

Changes in textile category designations for quota purposes also will result from the adoption of the Harmonized System. Since the appropriate textile category designation is linked to the proper classification of a specific product, Europe Craft cannot envision all the quota changes that will occur under the Harmonized System. So far as we can determine, the Office of Textiles and Apparel at the Department of Commerce still has not published a correlation on textile categories and statistical breakouts for apparel. Moreover, existing bilaterial textile agreements must be amended to reflect new quota categories, so that importers may obtain visas or export licenses for the proper category.

The Harmonized System should not be adopted in its Present Form

The Harmonized System was developed by the Customs Cooperation Council over a period of twelve years. Europe Craft does not deny that the concept of the Harmonized System is critical to promoting and facilitating international trade. The October 1986 draft conversion does not fully address the concerns of textile and apparel importers and consumers previously raised at hearings and during prior periods of comment on the Harmonized System. Given the hardships to consumers in increased costs and the the trade chaos that would result from its imprudent implementation on January 1, 1988, Europe Craft is unable to support the adoption of the Harmonized System in its present form.

Even if the Harmonized System is Approved by the Congress, Implementation should be Delayed

Given the careful development of the Harmonized System over so many years, the implementation of this system, the goal of which is to promote uniformity, should proceed in a thoughtful and well planned fashion rather than the hasty manner presently anticipated. The precipitous implementation of the Harmonized System on January 1, 1988 can only create confusion and raise barriers to trade rather than fulfill the stated purpose of facilitating international trade. If the Congress does enact the conversion, Europe Craft urges that implementation be delayed and a transition period be established to give importers the time necessary to undertake steps to comply with provisions of the Harmonized System.

Europe Craft appreciates this opportunity to express its views on the adoption of an international tariff classification system. It is hoped that these comments will be given full consideration before the subcommittee proceeds with its efforts to implement a Harmonized System that is revenue and quota neutral.

Respectfully submitted,

Diane L. Weinberg

William J. Maloney

DLW/WJM:cp

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DAVID A. BIEGING

May 11, 1987

By Hand

Mr. William J. Wilkins
Staff Director and Chief Counsel
United States Senate
Committee on Finance
Room SD 205
Washington, DC 20510

Re: Harmonized System Classification
Cartridges and Empty Cartridge Shells

Dear Mr. Wilkins:

On April 6, 1987, the International Trade Subcommittee of the Senate Finance Committee issued a press release inviting public comments on the Harmonized System. This letter is submitted to you on behalf of Federal-Hoffman, Inc. ("Federal") a manufacturer of ammunition products. Federal would urge the Senate to examine the Harmonized System independently and amend legislation to provide authority for implementing the Harmonized System by taking into account the comments that follow.

Federal has specific concerns with the Harmonized System of Tariff Nomenclature ("HS") proposal to classify different cartridge products in one category. Under the Tariff Schedules of the United States Annotated (hereinafter "TSUSA"), cartridges and empty cartridge shells are classified in TSUSA 730.94, 730.95, and 730.96. (Exhibit A). All three categories are included in the list of articles eligible for duty-free treatment under the Generalized System of Preferences ("GSP"). However, imports of TSUSA 730.94 from the Republic of Korea were graduated from the GSP as a result of a petition filed in the 1982 Annual GSP Product Review. The 1982 petition was filed on behalf of the domestic industry by the Sporting Arms and Ammunition Manufacturers Institute (hereinafter "SAAMI") of which Federal is a member. Despite this earlier action by Federal, the industry is again faced with the possibility of duty-free imports from Korea as a result of the HS.

The U.S. Trade Representative's Office requested comments on the conversion of the GSP to the HS. Federal submitted appropriate suggestions to that office but believes the Senate should carefully analyze the HS prior to its implementation.

The proposed HS classifies cartridges which are currently classified in three separate 5-digit line items into one 8-digit line item, HS 9306.30.40. (Exhibit B). Since all of the articles which will be classified in the new HS category are included in the GSP, it would appear that the HS category similarly will be GSP eligible. However, as a result of the 1982 SAAMI petition, Korea has been graduated from the GSP on one of the three TSUSA items comprising the proposed HS category. Korea's continuing competitiveness and increasing share of the U.S. cartridge market subsequent to its graduation from the GSP, is strong evidence that Korea should continue to remain ineligible for GSP benefits on HS 9306.30.40.

As is evidenced in Table I, Korea's share of the import market in real dollar terms has increased from $1.4 million in 1983 to $8.2 million in 1986. Additionally, ammunition imports from Korea have continued to increase absent GSP eligibility. Given the fact, however, that Korea was determined to be competitive in the cartridge market in 1982 and was subsequently graduated from the GSP, there is no justification for designating Korea as GSP eligible for imports of HS 9306.30.40.

TABLE I
TSUSA 730.94
1984-1986
Top 5 Suppliers

	1983		1984		1985		1986	
Country	$000	%	$000	%	$000	%	$000	%
Korea	1,405	39.6	6,363	63.9	3,417	33.3	8,170	42.2
Israel	76	2.1	443	4.4	953	9.3	1,944	10.0
Brazil	0	0	390	3.9	1,514	14.8	1,720	8.9
U.King.	9	.2	43	.4	31	.3	1,699	8.8
Germany	542	15.3	994	10.0	1,587	15.6	1,098	5.6
TOTAL ALL SUPP.	3,456	100.0	9,957	100.0	10,247	100.0	19,371	100.0

SOURCE: U.S. Bureau of Census IM-146

As was demonstrated in SAAMI's 1982 GSP petition, the Korean ammunition industry is well-developed. The major and possibly only Korean ammunition producer, Poongsan Metals Corporation, continues to utilize world-class technology. Poongsan's advances in civilian ammunition markets are directly attributable to its position as the Government of Korea's military ammunition supplier. To further assist Poongsan's efforts in the U.S. market, the Patton and Morgan Corporation was established in the United States. Clearly, the Korean's are well-positioned in the U.S. and international ammunition markets. As such, there can be no justification for any duty-preference for Korean ammunition.

The graduation of articles from the GSP on a country specific basis was intended by Congress to be permanent and not subject to discretionary redesignation. Therefore, Federal should not be required to demonstrate for a second time that Korea is competitive and no longer in need of GSP benefits on imports of cartridges. Since Korea was removed from the GSP pursuant to a graduation petition under the TSUSA, Korea should remain ineligible for GSP benefits on imports under proposed HS 9306.30.40.

Federal is concerned with the Administration's position that HS implementing legislation be placed on a "fast track" by Congress. In many instances, the HS fails to reflect the practices of the domestic industry. By so doing, domestic industries are required to re-petition for actions previously reviewed and decided by the United States government. Federal, therefore, would urge the Senate to carefully analyze the HS prior to its implementation and to suggest changes that will preserve the present status of countries which are no longer eligible for GSP.

Sincerely,

David A. Bieging

Exhibits

cc: Mary McAuliffe

PMD/mpb

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987)

SCHEDULE 7. - SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS
Part 5. - Arms and Ammunition; Fishing Tackle; Wheel Goods;
Sporting Goods, Games and Toys

Item	Stat. Suffix	Articles	Units of Quantity	Rates of Duty		
				1	Special	2
		Other firearms (including captive-bolt pistols, harpoon guns, and similar devices); line-throwing guns, Very light pistols and other devices designed to project only signal flares, pistols and other devices designed to fire only blank cartridges or blank ammunition, all the foregoing, and any devices similar thereto, which expend, or operate by means of, an explosive charge; and parts of the foregoing:				
730.80	00	Pistols designed to fire only blank cartridges or blank ammunition, and parts thereof	X	8.4% ad val.	Free (A,E) 3.4% ad val.(I)	105% ad val.
730.81	00	Other	X	3.4% ad val.	Free (A,E,I)	27.5% ad val.
		Arms (other than side arms and firearms), and parts thereof:				
		Pistols, rifles, and other arms which eject missiles by the release of compressed air or gas, or by the release of a spring mechanism or rubber held under tension, and parts thereof:				
730.85	00	Rifles, and parts thereof	X	7.8% ad val.	Free (A,E) 3.1% ad val.(I)	70% ad val.
730.86	00	Other	X	3.4% ad val.	Free (A,E,I)	27.5% ad val.
730.88	00	Other	X	5.7% ad val.	Free (A,E,I)	45% ad val.
		Bombs, grenades, torpedoes, mines, guided weapons and missiles and similar munitions of war, and parts thereof; ammunition, and parts thereof:				
		Cartridges and empty cartridge shells:				
		Containing a projectile:				
730.94	00	For rifles or pistols, except .22 caliber	M.	5% ad val.	Free (A*,E,I)	30% ad val.
730.95		Other		5% ad val.	Free (A,E,I)	30% ad val.
	25	.22 caliber	M.			
	40	For shotguns	M.			
	60	Other	M.			
730.96		Other		5% ad val.	Free (A,E,I)	30% ad val.
		Empty cartridge shells:				
	65	For rifles or pistols	M.			
	70	For shotguns	M.			
	75	Other	M.			
	85	Other	X			
730.97	00	Percussion caps	M.	4.2% ad val.	Free (A,E,I)	30% ad val.
730.98	00	Gun wads	Lb.	3.2% ad val.	Free (A,E,I)	35% ad val.
730.99	00	Other	X	3.6% ad val.	Free (A,E,I)	45% ad val.

Exhibit A

TARI SCHEDULE OF THE UNITED S' TES ANNOTATED

(Converted to the Harmonized System and reflecting final MTN concession rates of duty)

Heading	Stat. Suffix	Article Description	Units of Quantity	Rates of Duty General	 Special	 2
9306		Bombs, grenades, torpedoes, mines, missiles and similar munitions of war and parts thereof; cartridges and other ammunition and projectiles and parts thereof, including shot and cartridge wads:				
9306.10.00	00	Cartridges for riveting or similar tools or for captive-bolt humane killers and parts thereof........	Thousand	5%	Free(A,E)	30%
		Shotgun cartridges and parts thereof; air gun pellets:				
9306.21.00	00	Cartridges........	Thousand	5%	Free(A,E)	30%
9306.29.00	00	Other........	X.......	3.6%	Free(A,E)	45%
9306.30		Other cartridges and parts thereof:				
9306.30.40		Cartridges and empty cartridge shells....	....	5%	Free(A,E)	30%
		Cartridges containing a projectile:				
		For rifles or pistols:				
	10	.22 caliber........	Thousand			
	20	Other........	Thousand			
	30	Other........	Thousand			
		Empty cartridge shells:				
	40	For rifles or pistols........	Thousand			
	50	Other........	Thousand			
	60	Other........	Thousand			
9306.30.80	00	Other........	X.......	3.8%	Free(A,E)	45%
9306.90.00		Other........	....	3.6%	Free(A,E)	45%
	20	Guided missiles........	No.			
	40	Bombs, grenades, torpedoes, mines, and similar munitions of war; other ammunition and projectiles........	X			
	60	Parts for guided missiles........	X			
	80	Parts for bombs, grenades, torpedoes, mines, and similar munitions of war......	X			
9307.00.00	00	Swords, cutlasses, bayonets, lances and similar arms and parts thereof and scabbards and sheaths therefor........	X.......	5.3%	Free(A,E)	50%

Exhibit B

COMMENTS SUBMITTED ON BEHALF OF

GALLARD-SCHLESINGER INDUSTRIES, INC.

By

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Attorneys at Law
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New York, New York 10017
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to the

United States Senate Committee On Finance
Subcommittee on International Trade

Concerning Implementation of the

HARMONIZED SYSTEM

May 11, 1987

The following comments are submitted on behalf of our client, Gallard-Schlesinger Industries, Inc., in response to the Subcommittee's request for comments concerning the adoption of the Harmonized System, in conjunction with the hearing held on this issue on April 27, 1987.

Our client, Gallard-Schlesinger Industries, Inc., is a New York Corporation and is a major importer of a wide variety of chemical products for the food and pharmaceutical industries. The company has annual sales of approximately $30 million. Its purpose in submitting these comments is to call the attention of the Subcommittee to specific examples of how adoption of the Harmonized System, as currently drafted, could result in substantial duty increases on chemical products.

While Gallard-Schlesinger understands the advantages in adopting an international tariff classification system, the current draft conversion of the Tariff Schedules of the United States (hereinafter: TSUS) to the Harmonized System is seriously flawed. The draft conversion, especially with regard to chemical products, violates one of the guiding principles of its adoption in that it is not revenue neutral.

Those provisions of the present tariff law which apply to the importation of chemicals and chemical products are found in Schedule 4 of the TSUS. These provisions, and the various headnotes which govern their interpretation, are one of the most complex parts of our current tariff system. It is, therefore, more difficult to project the impact of the adoption of the Harmonized System upon the importation of chemical products than for most other types of merchandise. This complexity underscores the need for extensive training of Customs Service personnel in chemical classifications under the Harmonized System if major disruptions in the chemical trade attributable to the conversion are to be avoided. Due to the current staffing levels of the

Customs Service, it is simply impossible to obtain prospective rulings on how chemical products will be classified after January 1, 1988. Accordingly, a chemical importer is placed in a position where it cannot make long term price commitments, as it has no way of knowing what the applicable duty rate will be. Moreover, the cross reference between the TSUS and the Harmonized System which was prepared in 1983 provides such a range of potential classifications that it is virtually useless for purposes of making accurate projections. All of these facts militate in favor of delaying the implementation of the Harmonized System for a period of at least 6 months beyond January 1, 1988. Such a delay would allow the Customs Service more time in which to train its personnel, to provide prospective rulings on how merchandise will be treated under the new system, and to prepare an up-dated cross reference.

Examples of the uncertainties surrounding this conversion can be found throughout the chemical provisions of the tariff. Two specific examples which apply to Gallard-Schlesinger are as follows. The company imports "3, 4, 5 Trimethoxy Benzoic Acid" which is classified under item number 425.9930, of the TSUS. This provision currently carries a 4.2% rate of duty. We have reason to believe that this chemical might be classified under either item 2918.29.40 of the Harmonized System, a provision carrying a 13.5% rate of duty, or under item 2918.29.50 of the Harmonized System, a provision carrying the compound rate of 3.7¢/kg. + 17.9% ad valorem. If accurate, this classification not only will constitute a reversion from a simple to compound duty rate, it will also more than double the effective tariff rate. Similarly, our client also imports "Calcium D'Saccharate" which is classified under item 439.5095 of the TSUS with duty at the current rate of 3.7% ad valorem. We have reason to believe that under the Harmonized System this material could be classified under item 2916.39.50, a provision which carries the same compound rate of 3.7¢/kg. + 17.9% ad valorem. If accurate, this reversion to a compound rate constitutes a five fold increase in the current tariff rate.

These are only two egregious examples of the failure of the draft conversion to maintain the principle of revenue neutrality. Such dramatic, and probably unintended tariff increases under the draft conversion not only usurp the Congressional prerogative of authorizing changes in specific duty rates, they also could entitle America's trading partners to compensation under the General Agreement on Tariffs and Trade.

In summary, while the Harmonized System may be a desirable concept, the current draft conversion as it relates to chemical products is seriously flawed in that it does not maintain revenue neutrality. There is an additional problem with regard to such merchandise in that Customs has not been adequately trained to interpret the new provisions and is unable to provide importers with specific guidance. These facts dictate that the Congress should delay the implementation of the Harmonized System until it has had sufficient time to take another look at its revenue neutrality and also until the Customs Service has had adequate time to train its personnel and to notify importers as to how the adoption of the proposed system will affect their costs.

STATEMENT OF STANLEY NEHMER, PRESIDENT

ECONOMIC CONSULTING SERVICES INC.

ON BEHALF OF THE LUGGAGE AND LEATHER GOODS
MANUFACTURERS OF AMERICA, INC.

TO THE U.S. SENATE
COMMITTEE ON FINANCE
SUBCOMMITTEE ON INTERNATIONAL TRADE

ON THE PROPOSED CONVERSION OF THE TARIFF SCHEDULES
OF THE UNITED STATES INTO THE
HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM
(PRESS RELEASE #H-38)

MAY 11, 1987

STATEMENT OF STANLEY NEHMER, PRESIDENT OF ECONOMIC CONSULTING SERVICES INC., ON PROPOSED CONVERSION OF THE TARIFF SCHEDULES OF THE UNITED STATES INTO THE HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM

Re Chapter 42

In its April 6, 1987 press release #H-38, the Senate Finance Committee's Subcommittee on International Trade requested written comments concerning the proposed conversion of the Tariff Schedules of the United States into the Harmonized Commodity Description and Coding System. In response to this request, I am submitting the following comments on behalf of the Luggage and Leather Goods Manufacturers of America, Inc.

Our review of Chapter 42 of the October 1986 edition of the Harmonized System has revealed a major problem in the classification of luggage, handbags, flat goods, and sports, travel, and similar bags. This problem involves the inclusion of a specific statistical break-out (as well as a mention in the headnotes) for articles made of "vulcanized fiber". We strongly believe that any mention of "vulcanized fiber" should be removed from this section of the Harmonized System.

Prior to arriving at this position, we discussed this issue with International Trade Commission (ITC) staff and officials of the U.S. Customs Service. From the ITC we learned that the new statistical break-out for "vulcanized fiber" (item number 4202.99.20.00 in the Harmonized System) has its origin in item number 774.4000 of the Tariff

Schedules of the United States Annotated (TSUSA). This TSUS item is used for the classification of miscellaneous articles of "vulcanized fiber" and makes no reference to luggage or any other item now included in Chapter 42 of the Harmonized System. The ITC was unable to confirm whether or not actual import invoices had ever been checked prior to the creation of a specific break-out for "vulcanized fiber" articles in Chapter 42 of the Harmonized System. This should have been done in order to certify that luggage and/or other bags of "vulcanized fiber" are in fact being imported into the United States. Thus, it is unclear exactly how or why this new break-out was added to Chapter 42.

We learned even more startling news from the Customs Service. First, we were able to learn the definition of "vulcanized fiber" (several industry experts were unfamiliar with the term). It is a type of plastic that is derived by bonding or gelling many layers of paper material with a cross-linking solution. The solution is pressed out, and the result is a hard plastic material. Most importantly, we were informed that this process of manufacture is no longer used in this country or elsewhere. In fact, Customs has asserted that the reference to "vulcanized fiber" for an imported article is most likely an indication that the merchandise is being incorrectly classified. Thus, it is unclear to us exactly what was contained in the $2.3 million worth of goods that were imported under TSUS item 774.4000 in 1985. There is no reason to presuppose that luggage or similar items were included thereunder, and, if they were, that the classification was correct.

One additional point merits close attention. The column one rates of duty for luggage and other bags (i.e., those items which begin with "4202" in the Harmonized System) range from 4.7 percent ad valorem to 20 percent ad valorem. Of the thirty-two duty items, thirteen carry a 20 percent rate of duty. The glaring exception to this is the "Free" column one rate of duty that would be applied to "other" articles of "vulcanized fiber". We fear that importers will attempt to classify goods under this item of the Harmonized System in order to circumvent the rates of duty used in the remainder of this section. It is also interesting to note that, in the previous edition of the Harmonized System, "other" articles made of "other" than plastic sheeting or textile materials (where "vulcanized fiber" was included) carried a 20 percent ad valorem rate of duty in column one.

Accordingly, we strongly believe that the specific break-out for "other" articles of "vulcanized fiber", as well as the mention of "vulcanized fiber" in the headnotes of this section, should be removed from the Harmonized System. Since there does not appear to be any luggage, handbags, flat goods, sports, travel, or other similar bags made from "vulcanized fiber", there is no reason to provide for their classification in the Harmonized System. At the same time, including this item as proposed could contribute to circumvention of the tariff schedules.

I would be happy to answer any questions the Subcommittee on International Trade might have regarding this submission.

"A National Association of International Scope"

National Customs Brokers & Forwarders Association of America, Inc.
5 World Trade Center, Suite 9273/New York, NY 10048/(212) 432-0050

April 7, 1987

Senator Lloyd Bentsen
Chairman, Senate Committee on Finance
SD-205 Dirksen Senate Office Building
Washington, D.C. 20510

Attn: William J. Wilkins

Dear Mr. Chairman:

On behalf of the National Customs Brokers and Forwarders Association of America, I would very much appreciate your including the following comments for the record for your hearings on major trade bills, including H.R.3. Our comments will focus on the anticipated adoption of the Harmonized System tariff nomenclature by the United States as a replacement for the current tariff schedules.

Our Association is a national organization representing customs brokers and freight forwarders who provide an extensive range of services in international trade. On the import side, customs brokers provide the private sector interface with the U.S. Customs Service through the preparation and presentation of entry documents and the payment of duties, thus assisting in the observance of the U.S. import requirements. Customs brokers handle approximately 95 percent of all import transactions and thus would be the primary private sector users of the new tariff. On the export side, freight forwarders perform an essential role in facilitating exports through the preparation of shipping documents and the scheduling of space on outgoing carriers.

The Association firmly supports implementation of the Harmonized System by the United States because it will result in standardization of international product identification for import, export and statistical purposes. This standardization will provide particular benefits to U.S. exporters who will have

(1) a better means to determine overseas import requirements and duty rates and (2) a more effective mechanism for protecting their export interests through use of the dispute settlement procedure provided for in the Harmonized System Convention.

We must, however, bring to your attention one overriding concern which we have with regard to the implementation of the Harmonized System. This concern relates to the timing for implementation of the new tariff system and the effect which it will have on our industry operations.

A large number of customs brokers in the United States are automated and use a direct interface with the Customs Automated Commercial System which is based on the current tariff schedules. In order to properly prepare and file entries under the Harmonized System, brokers will be obliged to have new computer programs in place on the date the new U.S. tariff takes effect. The development of new programs, together with the necessary training of employees to use the new tariff system, will require the investment of considerable time and expense on the part of each broker. In order to avoid disruption of ongoing operations under the present tariff schedules which will continue in force until the day the new tariff system takes effect, we estimate that the average broker or importer will require at least six months to prepare for the changeover. However, until such time as it becomes certain that the Harmonized System will be adopted by the United States, brokers will be reluctant to institute the costly changeover process.

With the understanding that the Harmonized System is slated to go into effect on January 1, 1988, it is therefore essential that a definite position by Congress as regards the implementing legislation be taken no later than July 1, 1987. If this is not possible, the Association would oppose any later enactment of the implementing legislation which would have the effect of providing less than six months notice prior to the entry into force of the new tariff system.

We are well aware of the very heavy legislative program pending before Congress during the current session, and we appreciate the difficulties involved in considering one part of that agenda on an accelerated basis. Our concern is solely directed to achieving an orderly transition to the new tariff system. In this instance, the timing of the legislative process will have a very decisive impact on that result.

NCBFAA appreciates your attention to our views and will be pleased to work with the Committee further in considering how best to implement the Harmonized System.

Sincerely,

Arthur J. Fritz, Jr.
President

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April 23, 1987

Mr. William J. Wilkins
Staff Director/Chief Counsel
U.S. Senate Finance Committe
Room SD 205
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Wilkins:

Referring to the Senate Finance International Subcommittee consideration of adding authority to implement the Harmonized System on to the current trade bill:

I am the sales agent representing foreign manufacturers of upholstery and drapery products for the sales of their products into the United States. Current TSUS #357.05 specifically refers to jacquard woven upholstery fabrics, which is a major part of my business.

In the new Harmonized System, absolutely no mention is made of "upholstery fabrics". It was the understanding of our industry that the new Harmonized System would not change the existing tariff schedule, and yet the Harmonized System completely ignores the above-mentioned paragraph.

During the hearings on the Harmonized System, I, and a few of my colleagues, went to Washington to testify on this particular matter, and we also had several sessions with Mr. Eugene Rosengarten of the I.T.C., all to no avail.

I also wrote to the Department of Commerce, and received a letter back saying my industry was too small to receive any special consideration.

I would hope the Senate subcommittee would help out us "too small" businessmen. As the government is looking for small entrepreneurs, this is a good place to start.

While the new Harmonized System for textiles substitutes numbers for upholstery fabric, they are far too broad, and what is most likely to happen is that, once quotas are assigned to the Harmonized System numbers, we small business-

....

men will be frozen out because there is no differentiation between apparel fabrics and upholstery fabrics, as now constituted in the Harmonized System.

I would hope you would give serious consideration to my request to restore upholstery fabrics into the new system, and I thank you for your consideration of this letter.

Very sincerely,

DONALD S. NEUMANN

DSN:JL
cc: Mary McAuliffe

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PAMELA McCARTHY DEESE

May 11, 1987

By Hand

Mr. William J. Wilkins
Staff Director and Chief Counsel
United States Senate
Committee on Finance
Room SD 205
Washington, DC 20510

Re: Harmonized System Classification of Paint Rollers, Frames and Brushes

Dear Ms. McAuliffe:

On April 6, 1987, the International Trade Subcommittee of the Senate Finance Committee issued a press release inviting public comments on the Harmonized System. This letter is submitted to you on behalf of the Paint Applicators Trade Action Coalition ("PATAC") the members of which are U.S. manufacturers of paint brushes, rollers and frames as well as their key suppliers. (A membership list is attached). PATAC members represent over 65 percent of the total U.S. production of paint brushes, rollers and frames. PATAC would urge the Senate to examine the Harmonized System (HS) independently and amend Senate legislation to provide authority for implementing the HS taking into account the comments that follow.

PATAC has specific concerns with the HS proposal to classify paint brushes and rollers in one category. The problem for the industry is one of collecting accurate import data. Currently, the separate classifications for paint brushes and rollers provide a basis for analyzing the impact of imports on the domestic industry. Combining these articles in one tariff category will prove disadvantageous to a domestic industry already experiencing significant pressure from imports. To underline this point, I should note that PATAC has undertaken an aggressive campaign with the Customs Service to deter mislabelling of imports of paint applicator products. Moreover, PATAC members recently concluded a successful antidumping action against imports of paint brushes from the People's Republic of China.

Under the Tariff Schedules of the United States Annotated ("TSUSA"), paint rollers are classified in TSUSA 750.80 and are dutiable at a rate of 7.5 percent ad valorem. Paint brushes, on the other hand, are classified in TSUSA 750.65 and are dutiable at a rate of 4 percent ad valorem. The proposed HS classifies paint rollers in category HS 9603.40.00 with paint brushes and assesses the lower duty of 4 percent. Neither the reduction in duty for paint rollers nor the elimination of a separate line description for paint rollers is warranted. Indeed the change will clearly have an adverse effect on the industry.

In addition, PATAC successfully petitioned the 484E Committee in 1986 for the assignment of a separate 7-digit number for paint roller frames. As of January 1, 1987, paint roller frames are classified in TSUS 657.2570 under the description for other articles of iron or steel, not coated or plated with precious metals.

The purpose for the industry's request was to facilitate the collection of statistics on imported paint roller frames entering the United States. Under the proposed HS, there is no separate statistical break-out for paint roller frames. We understand that paint roller frames will enter under HS 7326.90.90.90. Consequently, the industry will not be able to accurately track paint roller imports after 1987. Then, in 1988 PATAC will be forced to re-petition the 484E Committee for a statistical subdivision.

PATAC is concerned with the Administration's position that HS implementing legislation be placed on a "fast track" by Congress. In many instances, the HS fails to reflect the practices of the domestic industry. By so doing, domestic industries are left with inadequate methods of data collection and hence, an inability to monitor apparent U.S. consumption in the relevant market. Moreover, there is no way in which to track import competition on a product specific basis. Additionally, in direct opposition to PATAC interests, tariffs have been reduced on products such as paint rollers when the domestic industry continues to face stiff competition from imports. Therefore, PATAC urges the Senate to carefully analyze the HS prior to its implementation and to request changes that will preserve the present duty treatment and data gathering system for paint applicators that are incorporated in the Tariff Schedules.

Sincerely,

Pamela M. Deese

Pamela M. Deese

cc: Mary McAuliffe
PATAC members

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Special Filaments Division
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Wilmington, DE 19898

Paint Brush Corporation
104 W. Cherry Street
Vermillion, SD 57069

Polymers, Inc.
P.O. Box 151
Middlebury, VT 05753

Kelly Handle Company
179 Brook Street
Clinton, MA 01510

Rae Metal Products Co., Inc.
P.O. Box 1828
Clifton, NJ 07015

Charles E. Green & Son, Inc.
625 Third Street
Newark, NY 07107

MANUFACTURERS

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P.O. Drawer B
Wooster, OH 44691

Bestt/Liebco
1201 Jackson Street
Philadelphia, PA 19148

Rubberset Company
Deshler Plant
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May 11, 1987

William J. Wilkins, Esq.
Staff Director and Chief Counsel
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United States Senate
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Dirksen Senate Office Building
Washington, D.C. 20510

Ms. Mary McAuliffe
Minority Chief of Staff
Committee on Finance
United States Senate
Room SD-205
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Wilkins and Ms. McAuliffe:

Pursuant to the Press Release, #H-38, April 6, 1987, of the Committee, this written statement of views is submitted on behalf of PPG Industries, Inc. (PPG), a domestic producer of flat glass and glass fiber, concerning the Administration's proposal to convert the Tariff Schedules of the United States to the so-called Harmonized System. PPG opposes certain provisions of the proposed Harmonized Code pertaining to its products. It has submitted its views in the various hearings held by the USTR's cognizant committee, to the Committee on Ways & Means of the House of Representatives, to the Committee for Statistical Annotation of Tariff Schedules and its Chairman, the Director, Office of Tariff Affairs, United States International Trade Commission (ITC). As a result of these communications, we understand that the last cited authority, the Chairman of the Committee for Statistical Annotation of Tariff Schedules and Director of the ITC's Office of Tariff Affairs and Trade Agreements, has concluded to recommend to the USTR certain technical corrections responsive to the issues raised by PPG. We are not informed of the action on or response to these recommended corrections by USTR. Accordingly, we present to the Committee on Finance PPG's requests that it require correction of the matters raised in the issues presented by PPG, as recapitulated herein, before approving any legislation authorizing implementation of the proposed conversion of the TSUS into the Harmonized System Code.

I. Identification of the Harmonized Schedule Headings and the related TSUS Items to which these views are directed: Issues raised by PPG.

A. See Appendix A, Table I, to this statement.

*MEMBER CALIFORNIA AND D.C. BARS; **MEMBER MINNESOTA BAR, NOT ADMITTED IN D.C.;
***MEMBER MARYLAND AND D.C. BARS; †MEMBER MASSACHUSETTS AND NEW YORK BARS,
NOT ADMITTED IN D.C.; ††MEMBER MARYLAND BAR, NOT ADMITTED IN D.C.; †††MEMBER CHARLEROI, BELGIUM, NOT ADMITTED IN D.C.

I. B. The duty rates underscored under the Harmonized System Headings on Table I are those which are lower than existing Column 1 TSUS duty rates. PPG opposes such reductions in current rates of duty as a result of the proposed conversion to the Harmonized Code. In this regard, the Director of the Office of Tariff Affairs and Trade Agreements, ITC, by letter dated April 20, 1987, informs us concerning the duty-reduction Headings, as follows:

(1) HS 7004.10.20. He will recommend that USTR change the duty rate to 7.2% based on a preponderance of trade in TSUS item 544.16. We accept that recommendation.

(2) HS 7004.10.50. He finds that the trade-weighted average duty rate of the constituent TSUS Items would be 2.2%. We disagree, and as indicated in Appendix A, Table I, p. 1, believe the applicable ad valorem equivalent rate of the constituent TSUS Items should be an average of 6.3% and 7.2%, or 6.8%.

(3) HS 7004.90.15. The USTR is considering reinstating the specific duty rate for TSUS Item 542.21, or 2.2¢/kg. We concur.

(4) HS 7004.90.20. The USTR is considering reinstating a trade weighted average specific duty rate of 2.5¢/kg. We concur.

(5) HS 7004.90.25. The USTR is considering reinstating the specific duty rate for TSUS Item 542.31, or 0.9¢/kg. We concur.

(6) HS 7004.90.30. He states that USTR is considering reinstating the specific duty rate in lieu of the ad valorem equivalent rate shown in Table I, Appendix A, p. 2. We concur in that reinstatement. He finds, however, that the proposed rate should be 1.1¢/kg based on a direct metric conversion from the current TSUS rate applicable to the constituent TSUS Items 542.42 and 544.44 (0.5¢/lb). We disagree. The converted specific rate of duty should be 1.3¢/kg. 1985 imports of 4,267,299 lbs. were subject at 1987 duty rates to duty of $24,230, equal to $0.0057-/lb x 2.2046 = $0.012518 = $0.013/kg.

(7) HS 7004.90.50. He states that the proposed HS rate should be 7.2%. We concur.

(8) H.S. 7005.29.05. He adheres to the view that the specific duty rate equivalent of the combined constituent TSUS duty rates should be 20.8¢/m on the ground that "USTR has consistently used 1981-1983 trade data for such calculations, as have those of our trading partners who are also considering adoption of the HS

next year." We disagree. We believe that where a duty reduction would result from using outdated import statistics, the latest full year's data should be used. Thus, using 1985 imports, 10,598,491 sq. ft. were subject at 1987 duty rates to duty of $206,008 = $0.019437/sq. ft. x 10.76391 sq. ft. per sq. meter = $0.209223 = 20.9¢/sq. meter, not 20.8¢ as the draft HS shows.

(9) H.S. 7007.11.00. He acknowledges that the designation "C" in the special column is in error inasmuch as the ATCA includes only laminated safety glass windshields in its product coverage. We concur.

(10) H.S. 7019.10.10. He will recommend that USTR adopt separate rate lines for glass fiber yarns, colored (at 9.6%) and not colored (7.4%). We concur.

(11) H.S. 7019.90.00. He will recommend that USTR provide separate rate lines for woven articles of glass fibers (at 6.9%) and other articles of glass fibers (6.2%). We concur.

II. Other Issues Raised by PPG Concerning the Flat Glass and Fiber Glass Provisions of the Proposed Harmonized System Code:

A. In the "Additional U.S. Notes" to Chapter 70, the USTR has retained the base line criterion for colored flat glass of light transmittance properties "for glass 6.35 mm in thickness." As PPG pointed out in its brief and testimony to the USTR at the November 21-22, 1983 public hearing, and in PPG's written comments of November 1, 1984 on the ITC's draft of the proposed H.S. conversion submitted on June 30, 1983 -

> there is no industry, trade or scientific justification for this [6.35 mm in thickness] base line criterion. The U.S. industry trade standard is 1/4", which is equivalent to a nominal 6.0 mm, as properly expressed in Subpart B, headnote 2(c), Part 3, TSUS.

By retaining the identical light transmittance values expressed in the TSUS headnote, but increasing the thickness of the glass through which transmittance is to be measured, the USTR has effectively reduced the universe of flat glass which can qualify as "colored". This is the effect of the interaction of the USTR's 6.35 mm standard and the language "or the equivalent transmittances for any other thickness". The adoption of the noncommercial, unprecedented 6.35 mm standard will cause confusion in color specification and approval. The substitution of such a

> new, uncommercial standard violates the President's guidelines calling for simplification consonant with sound nomenclature principles which to the extent possible avoids changes significant for U.S. industry, workers and trade. The USTR has - over PPG's objections - introduced a criterion of selection which will be trade distortive.
>
> The Director of the Office of Tariff Affairs and Trade Agreements, ITC, advises that he has consulted with the U.S. Customs Service concerning PPG's position, as above described, and that "It is believed that the change of the thickness reference to 6 mm can be justified and we will endorse its adoption." We concur.

B. Tempered safety glass. The USTR failed to correct the possibility of confusion introduced in the proposed Harmonized Schedule Headings into the meaning and content of the TSUS classification terminology, "Toughened (specially tempered) glass" by retaining over PPG's objection the possibly diluted term "toughened (tempered) safety glass" in Heading 7007 and 7007.-11.00 in contradistinction with the term "toughened (specially tempered)" as applied to glassware in heading 7013.32.10. In its testimony, cited above, PPG recommended that the terminology for tempered flat glass and glassware not be changed from the TSUS formulation in view of the pending American Manufacturer's Protest challenging Customs' recent deviant interpretation of the term as applied to glassware. See Libbey Glass, Division of Owens-Illinois v. United States, Court No. 84-03-00410, Joined Issue Calendar, U.S. Court of International Trade. As stated in PPG's letter of November 1, 1984, to the USTR -

> These terms have a well-established connotation which is now made questionable by the elision of the word "specially" from the term "specially tempered" in the existing tariff schedules, as applied to flat glass. In view of the pending American Manufacturer's Protest in the U.S. Court of International Trade concerning the construction of the term "toughened (specially tempered)" as applied to household glassware, the USTR's acceptance of the ITC's draft is tantamount to taking sides with the foreign interests in that dispute. PPG objects to such preferential action by the USTR, and recalls to the Chairman's attention the colloquy on this subject at the public hearing in which he indicated that the USTR would not interfere with the Court's resolution of that issue.
>
> > The Director of the Office of Tariff Affairs and Trade Agreements of the USTR advises as follows:
> >
> > "Customs has indicated to us that, in their view, the scope of HS items 7007.11 and 7007.19 does not differ from the 'specially' tempered flat glass provisions of the current TSUS. That is,

> because safety glass must be 'specially' tempered to be considered safety glass by all U.S. industry and Government standards, it is not likely that partially tempered glass could be classified in HS item 7007. However, Customs is apparently opposed to using the term 'specially tempered' in heading 7007, as it may further limit the product scope of that heading. We note that the draft legislation provides an administrative mechanism for giving effect to judicial decisions, issued under the current TSUS, that would have affected rate treatment had they been issued earlier. We can propose that assurances be given from USTR to you that, should PPG [sic! the plaintiff in the pending court case is Libbey Glass, Division of Owens Illinois] prevail in its pending case regarding glassware, the effect of that decision be appropriately incorporated into the HS-based tariff whether by the addition of a legal note defining the necessary characteristics of the glassware or otherwise." We concur with respect to the proposed assurances, if given. We disagree with Customs position that adhering to the language of the existing tariff provisions on "toughened (specially tempered)" flat glass and glassware "would further limit the product scope of that heading [7007]". If that were to be the effect, that is the best evidence the proposed Harmonized System language would change the scope of the specially tempered glass provisions beyond their current coverage with a resulting reduction in duty. Reductions in duty should not be effected by the conversion of the existing TSUS into the proposed Harmonized System Code.

C. Preservation of statistical data for important commercial categories of flat glass being merged in the Harmonized Schedules.

The proposed conversion of the TSUS into the Harmonized Schedules departs from long-established U.S. commercial and industry practice by specifying metric units in the article descriptions, units of quantity and rates of duty columns of the draft conversion. In its testimony, briefs and written comments, cited above, PPG recommended that those references be changed to conform to U.S. flat glass commerce and industry trade terms; viz., sq. ft. and lineal inches. As stated by PPG in its November 1, 1984 comments on the ITC's draft schedules of June 30, 1983 -

the trade and commerce of the United States, including imports, in flat glass is under long-established commercial practice conducted in transaction terms of cents per square foot. Such usage is not only uniform throughout the markets of the United States, but also will continue in that mode for many years to come. The proposed alignment of the U.S. tariff schedules with the Harmonized Commodity Description and Coding System sponsored by the Customs Cooperation Council should be responsive to commercial reality in the United States. It is implicit in the President's guidelines that the Harmonized Schedule should use to the greatest extent practicable sound, well-established commercial nomenclature designations. The substitution of unused, unfamiliar metric units for the long-established commercial designations in the flat glass provisions of the existing Tariff Schedules is neither justified, consonant with commercial practice, nor required by either the President's guidelines or the Metric Conversion Act of 1975.

The classification headings for clear flat glass, the very heart of the classification of the preponderance of flat glass products, unwisely substitute metric designations (m^2) for the square foot and united inch area designations of the TSUS. Square foot and united inch area measurements are long-established uniform practice in the U.S. market place. The substitution of m^2 for these concepts will result in confusion in the trade and commerce of the United States.

When the result will be positive harm to the trade and commerce of the United States, there is simply no justification for throwing out the entire mosaic of long-established commercial practice to achieve a slavish conformance to the European preference for metric measurements. Aligning U.S. tariff provisions to the structure of the Harmonized Schedule nomenclature does not require abandoning the units in which goods are uniformly priced and sold in the trade and commerce of the United States. Such action is contrary to both the President's guidelines and the Metric Conversion Act of 1975.

PPG requests the Senate Finance Committee to require the USTR to substitute the square foot and linear area criteria of classification from the existing TSUS for the metric area criteria of the flat glass provisions of the draft conversion. This can be accomplished by utilizing the criteria specified in the attachment to PPG's written submission to the Secretary of the ITC of April 1, 1982, and Mr. John C. Reichenbach, Jr.'s letter of April 6, 1983, to Mr. Dave Beck, Office of Tariff Affairs, ITC, with copies, among others, to Ms. Phyllis O. Bonanno, Director, Private Sector Liaison, USTR, viz. -

1. Change metric configuration under all headings in the columns labeled 'Articles'; 'Units of Quantity'; and 'Rates of Duty' to U.S measurement terms (lbs., sq. ft., etc.).

2. Change the reference to glass area in sub-headings 7004.90.05, 7004.90.10, 7004.90.15, 7004.90.20, 7004.90.3010 and 7004.90.3050 from 0.26 m^2 (equivalent to 2.8 sq. ft.) to 2-2/3 sq. ft.

3. Change the reference to glass area in sub-headings 7004.90.2510, 7004.90.2520, and 7004.90.2550 from 0.26 m^2 to 2-2/3 sq. ft., and from 0.58 m^2 (6.2 sq. ft.) to 7 sq. ft.

4. Change the reference to glass area in sub-headings 7005.29.0500, 7005.29.1500 from 0.65 m^2 to 7 sq. ft.

> As to the foregoing issue, the Director of the Office of Tariff Affairs and Trade Agreements limits comment to item 4 above, stating: "your requests for these statistical breakouts are being referred to the 484(e) Committee for its consideration. At this time we do not anticipate any problems to adoption."
>
> We do not regard this limited response to the 4 requested changes set out above to be satisfactory, and request the Committee to act upon PPGs requests as presented above, or to withhold its approval of the enabling legislation if such changes are not forthcoming.

D. Quantity designations for imports of flat glass. The proposed Harmonized System Code departs from common U.S. usage in describing the quantity designations which will be denied entry unless packed in a specified manner. Par. 3 of the Additional U. S. Notes is unchanged from Par. 4 of the ITC's June 30, 1983 draft in retaining 4.6 m^2 and 9.2 m^2 as the size of the units in which imported flat glass is to be packed instead of retaining the uniform U.S. standard of 50 sq.ft. and 100 sq. ft. expressed in Subpart B, headnote 4, Part 3, TSUS. While 50 sq. ft. and 100 sq. ft. are closely equivalent to 4.6 m^2 and 9.2m^2 (the correct conversion is 4.645 m^2 and 9.290 m^2), the point of PPG's objection, previously communicated, is that the draftsmen have abandoned the stated purpose of conforming the terminology in the text of the Harmonized Schedule "to common U.S. usage" (USITC Publication No. 1400, June 1983, p. 22). The simplified schedule is supposed to be readily usable by the trade. The trade for generations has been accustomed to the 50 sq. ft. and 100 sq. ft. criteria. The USTR, as the ITC, has misconceived the President's suggestion that wherever consistent with his guidelines for achieving a commercially realistic nomenclature which avoids injuring domestic industry and workers, the classification adopt metric measurements. Neither the President's suggestion, his guidelines, nor the public policy expressed in The Metric Conversion Act of 1975 require such obdurate rejection of the expert testimony and briefing materials presented by PPG that such slavish substitution of metric measurement for historic and vital commercial designations will cause confusion to all factors in the trade and injure domestic producers and their workers.

PPG requests the Senate Finance Committee to require the USTR to revise Chapter 70's Additional U.S. Note 3 by substituting "50 sq. ft.(or 4.65 m)" for 4.6 m, and "100 sq. ft. (or 9.3 m)" for 9.2 m, wherever they appear therein. Alternatively, PPG requests this Committee to include in any enabling legislation a specific provision which will change the Additional U.S. Notes as described above.

E. The proposed conversion (October 1986) displays rates for U.S. imports of certain flat glass and fiber glass commodities which are lower than some or each of the rates proposed by Canada, the EEC, or Japan for the certain tariff heading. PPG objects to preferential treatment for imports from those countries as compared with the rates applicable to U.S. exports to such countries. The detail is presented in the following table.

Comparison of U.S., Canadian, EEC, and Japanese MFN duty rates
in the proposed Harmonized Schedules of those countries.
(Underscored duties of other countries exceed U.S. duties
for the like Harmonized Schedule category).

Heading	U.S.	Canada	E.E.C.	Japan
7004.10		6.8%	6%, min. 0.60 Ecu/ 100 kg	4.2%
7004.10.10	4.9%			
7004.10.20	2.8%			
7004.10.50	4.9%			
7004.90		5.5%	6%, min. 0.60 Ecu/ 100 kg	
7004.90.05	0.8%			
7004.90.10	3.2%			3.2%
7004.90.20	4.9%			4.8%
7004.90.25	3.2%			
7004.90.30	0.5%			
7005.10	4.9%	5.5%	3.8%	7.9%
7005.21		4%	3.8%	7.9%
7005.21.10	16.1¢/m^2 (4.6% equiv.)			
7005.21.20	6.3%			
7005.29		4%	3.8%	
7005.29.010				5.8%
7005.29.020				7.9%

Heading	U.S.	Canada	E.E.C.	Japan
7005.29.05	20.8¢/m^2 (8.45% equiv.)			
7005.29.15	16.1¢/m^2			
7005.29.25	6%			
7005.30	32.3¢/m^2 (2.5% equiv.)	4%	3.8%	7.9%
7006				1.9%
7006.00A			5.8%	
7006.00.10		5.5%		
7006.00.40	4.9%			
7006.00B			5.3%	
7006.00.90		6.8%		
7006.00.20	7.2%			
7007.11	6.2%			6.6%
7007.11A			Free	
7007.11B			5.8%	
7007.11.11		17.5%		
7007.11.19		9.2%		
7007.11.20		Free		
7007.11.30		10.2%		
7007.19	6.2%	10.2%	5.8%	5.8%
7007.21				Free
7007.21A			Free	
7007.21B			5.8%	
7007.21.10	5.5%			
7007.21.11		17.5%		
7007.21.19		9.2%		
7007.21.20		Free		
7007.21.30		10.2%		
7007.21.50	5.5%			
7007.29	5.5%	10.2%	5.8%	5.8%
7008.00	4.4%	10.2%	5.3%	1.9%
7009.10	7.8%	9.2%	6.5%	4.8%
7009.91		11.3%	6.5%	4.8%
7009.91.10	7.8%			
7009.91.50	10%			
7009.92		11.3%	6.5%	4.8%
7009.92.10	7.8%			
7009.92.50	10%			

Heading	U.S.	Canada	E.E.C.	Japan
7019.10			9.5%	4.6%
7019.10.10	7.4%	8.5%		
7019.10.21		12.5%		
7019.10.29		15%		
7019.10.30	6.2%			
7019.10.40	7.2%			
7019.10.60	6%			
7019.20			9.5%	5.1%
7019.20.10	6%	15.1%		
7019.20.20	8.3%			
7019.20.50	11.1%			
7019.20.90		25%		
7019.31.00	6.2%		9.5%	4.6%
7019.31.10		15%		
7019.31.90		25%		
7019.32	6.2%	25%	6.5%	4.6%
7019.39		10.2%	6.5%	4.6%
7019.39.10	6.2%			
7019.39.50	6.2%			
7019.90	6.2%		9.5%	4.6%
7019.90.10		25%		
7019.90.90		10.2%		

Source: Draft Harmonized Schedules of the countries.

PPG requests that the Committee include in any enabling legislation reported by the Committee a provision which adjusts the MFN tariff rates of the United States under the cited provisions of the proposed Harmonized Schedule to the same level as the rates of our major trading partners, the EEC, Canada and Japan, as described above.

Respectfully submitted,

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February 25, 1987

Carolyn Frank, Secretary
Trade Policy Staff Committee
Office of the U.S. Trade Representative
Room 521
600 17 Street
Washington, D.C. 20506

BY FEDERAL EXPRESS

Harmonized System-
T.S.U.S. Proposed Conversion: Record Jackets

Dear Ms. Frank:

On behalf of our client, Shorewood Packaging Corporation, 10 East 53rd Street, New York, New York, this submission is made to request a correction in the third edition of the proposed conversion from the Tariff Schedules of the United States ("TSUS") into the Harmonized Commodity Description and Coding System of the provision for phonograph record jackets. The proposed provision will result in a significant duty increase, contrary to the purpose and intent of the conversion.

Shorewood Packaging Corp. manufacturers paperboard cartons and containers in plants in New York and Georgia and is the largest supplier of packaging to the music industry in the United States. In 1985, it acquired an existing facility in Canada to provide supplemental manufacturing capacity. Shorewood Canada purchases U.S. paperboard in sheets and rolls to be manufactured into various containers including phonograph record jackets. These articles are sold to U.S. record manufacturers for packaging phonograph records for retail distribution.

Pursuant to Ruling CLA-2 CO:R:CV:G 070040 of July 22, 1982 (copy attached), the Customs Service confirmed the proper classification of these articles as "printed matter not specially provided for (n.s.p.f.)" under T.S.U.S. item 274.80, dutiable at 2 cents per pound, rather than as "articles of paper, n.s.p.f." in T.S.U.S. item 256.90, currently dutiable at 5.3% _ad valorem_. However, under the latest edition of the Harmonized System conversion, "record sleeves" are provided _eo nomine_ under heading 4819.50.40 which provides for "Other packing containers, including record sleeves: Other" dutiable at 5.3% _ad valorem_. This provision was derived* from T.S.U.S. item 256.90 for "articles of paper, n.s.p.f.," the classification specifically _rejected_ by the Customs Sevice in its 1982 ruling. Thus the duty on empty record jackets would increase by a factor of 464 unless corrected.

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* _Conversion of the Tariff Schedules of the United States Annotated Into the Nomenclature Structure of the Harmonized System, Annex III: Cross-Reference from Converted Tariff Schedule to Present TSUSA_, USITC Pub 1400 (June 1983).

The current duty rate could be readily preserved by providing a specific 8-digit duty-line subvision for "record sleeves," as named in the superior heading, with a duty of 2 cents per pound as follows:*

Heading	Article Description	Rates of Duty General	Special	2
4819.50	Other packing containers, including record sleeves:			
4819.50.20	Sanitary food and beverage containers	4.3%	Free (A,E)	35%
[4819.50.30	Record sleeves	2¢ per lb.	Free (A,E,I)	8.75¢ per lb.]
4819.50.40	Other	5.3%	Free (A,E)	35%

It would be extremely inequitable to both American record manufacturers and consumers to inadvertently enact a duty increase of this magnitude as contemplated by the current proposal. Moreover, it appears that the only imports of empty record jackets into the United States are from Canada, a country with which the United States is currently engaged in negotiations towards the consummation of a free trade agreement. To suddenly and significantly increase duties on a product which impacts only

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* Recommended addition indicated in brackets.

Canadian trade would be inconsistent with a trade-liberalizing policy towards Canada. Finally, the major importer of these packaging materials is the largest U.S. manufacturer who relies on Canadian manufacturing facilities to provide only auxiliary capacity.

For all the foregoing reasons, we respectfully request that converted Harmonized System heading 4819.50 be subdivided as suggested herein so that U.S. producers and consumers are not penalized for a potentially very expensive oversight.

Respectfully submitted,

SANDLER & TRAVIS, P.A.

By: Beth Ring
Beth C. Ring

BCR:ne

274.80
of litho printed Item #2

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
CUSTOMS INFORMATION EXCHANGE

AUG 16 11 44 AM '82
U.S. C[illegible] SERVICE
BUFFALO-N[illegible] FALLS

FILE: CLA-2 CO:R:CV:C
070040 JCH
JUL 2 2 1982

TO : Chief, Customs Information Exchange

FROM : Director, Classification and Value Division

SUBJECT: Difference of Opinion on Customs Form 6431

In your memorandum of May 10, 1982, you transferred the difference of opinion or Customs Form 6431 dated February 9, 1982, concerning the tariff classification and marking requirements for phonograph record jackets. This merchandise is produced in Canada. This difference is listed as the twelfth difference on page 1 of C.I.E. N-89/79, suppl. 28, for March and April 1982. A decision on the marking question will be furnished in a separate reply. Our decision on the tariff classification issue follows:

ISSUE:

Under the principles of previous Headquarters decisions, the record jackets in question would be classifiable under the provision for printed matter not specially provided for (n.s.p.f.) and printed in whole or in part by a lithographic process, in item 274.80, Tariff Schedules of the United States (TSUS). The current column 1 rate of duty required under this provision is 2 cents per pound. Various Customs officers disagree with this classification claiming, in part, that our previous decisions were predicated on a practice, but that the information available when the decisions were made was insufficient to support a practice finding. It is claimed, therefore, that the merchandise is properly classifiable under the provision for articles of paper, n.s.p.f., in item 256.90, TSUS. The current column 1 rate of duty required under that provision is 7.3 percent ad valorem.

FACTS:

A sample which has been provided is a jacket for a record by a contemporary musical group. The jacket is typical for records of this type with a high quality attention-getting picture on the front of the jacket with additional pictures and textual matter on the reverse side. The textual matter includes information about each preformer in the group, about the artifacts in the picture on the front of the cover, and an index of the music on the record.

LAW AND ANALYSIS:

We will not review the practice issue at this time because we are of the opinion that the issues raised with respect to the merits of the tariff classification currently in effect do not warrant the conclusion that the tariff classififcation is clearly wrong or otherwise at variance with the current views of the Customs Service.

In challenging the current Customs position, emphasis has been placed on the similarity of record jackets to other merchandise which has a function in protecting and merchandising its contents. The question is raised, therefore, whether record jackets are a type of container similar to other containers on which there is any printing which is "merely incidental to the primary use of the article" as a container and therefore exempt from classification as printed matter.by Headnote 1, Part 5, Schedule 2, TSUS.

We find, however, that the analogy to more conventional types of containers is misplaced, and that a more cogent analogy is to book jackets which we have also consistently held classifiable as printed matter or lithographs. See, for example, T.D. 68-29(9), 2 Cust. Bull. 59 (1967). We can find no basis for treating record jackets any differently. Both record jackets and book jackets, or dust covers as they are sometimes called, add a dimension to the basic product which enhances its merchandising potential while at the same time protecting the product to some extent. In this sense, they are both similar to containers. However, unlike the typical container, book jackets and record jackets traditionally are used to give biographical information concerning authors, composers, performers, etc., and other types of information which supplements the information in the book or on the record label. Often this textual material is extensive, as where lyrics, parts of librettos or scores are furnished on the record jacket, or other information is furnished in essay or other narrative form. Pictorial and textual matter on record jackets is often original and copyrighted, and the dissemination of the record jacket in the record market constitutes a publication for copyright purposes.

Also, unlike the typical container, a record jacket, like a book jacket, is retained with a record and not disposed of. Retention of the jacket is a major factor in determining the value of collectables, and in the case of record jackets, the jacket is what is autographed when the autographs of performers, musicians, etc. are sought.

HOLDING:

highlighted part revoked previously

[redacted]

for Harvey B. Fox